

CHICAGO & CO. 170, LINDEN ST.
21

United States Circuit Court,

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

JOHN BENJAMIN HEATH and Others,

vs.

THE ERIE RAILWAY COMPANY, JAY GOULD,
JAMES FISK, Junior, and FREDERICK A. LANE.

COPY,
BILL OF COMPLAINT.

EVARTS, SOUTHMAYD & CHOATE,

Solicitors.

NEW YORK.

1870.

*Subpoena Served on Defendants Gould & Co.
9 April*

In the Circuit Court

1

OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In Equity.

To the Honorable the Judges of the Circuit Court of
the United States, for the Southern District of
New York :

Your Orators John Benjamin Heath, Robert Amadeus
Heath and Henry Burnley Heath, composing the firm
of Heath & Co., merchants, of London, Great Britain;
Edward Lewis Raphael and Henry Lewis Raphael com- 2
posing the firm of R. Raphael & Sons, merchants, of Lon-
don aforesaid; William Henry Queade, of London aforesaid,
Esquire, Eric Carrington Smith, of London aforesaid,
banker, and Charles Burt, of London aforesaid, solicitor,
bring this their bill of complaint against The Erie Railway
Company, Jay Gould, James Fisk, Junior, and Frederick
A. Lane, citizens of the State of New York, and there-
upon your orators complain and say :

That your orators are and at the several times of ac-
quiring the shares of stock of The Erie Railway Company
hereinafter mentioned were aliens, and subjects of the
Queen of Great Britain and Ireland; and that the defend-
ant The Erie Railway Company, is a corporation created 3
by and organized under the laws of the State of New
York, transacting its business in that State, and having
its chief office and place of business in the Southern
District of New York, and the defendants Jay Gould,
James Fisk, Junior, and Frederick A. Lane, are respec-
tively citizens of the State of New York, residing in the
Southern District aforesaid.

That your orators are shareholders of the said The
Erie Railway Company, and bring this suit on behalf
of themselves and all others in like situation who shall
elect to unite in the suit and contribute to the expenses
thereof; and your orators state, each of them of his

- 4 own knowledge in respect of his own shares, and upon information and belief as to the shares of his co-plaintiffs, that the rights and interests of your orators respectively, as such shareholders, are as follows, that is to say, your orators, John Benjamin Heath, Robert Amadeus Heath and Henry Burnley Heath as co-partners under the firm name of Heath & Co., as aforesaid, are the owners and holders of two thousand seven hundred shares of the common capital stock of the said The Erie Railway Company, of the par value of one hundred dollars each, and your orator Robert Amadeus Heath, is the owner and holder of eleven hundred shares of the common capital stock of said company of like par value, and your orators Edward Lewis Raphael and Henry Lewis Raphael as co-partners under the firm name of R. Raphael & Sons, are the owners and holders of five thousand shares of the common capital stock of said company of like par value, and your orator Eric Carrington Smith, is the owner and holder of four hundred shares of the common capital stock of said company of like par value, all of which shares stand in the names of your orators respectively as aforesaid on the books of said company, and that your orator William Henry Queade is the owner and holder of two hundred shares of the preferred capital stock of the said Erie Railway Company, of the par value of one hundred dollars each, being parcel of the preferred stock of said company, hereinafter more particularly described or referred to,
- 5
- 6 which preferred stock is standing in the name of your orator William H. Queade, on the books of said company, and that your orator Charles Burt, is the owner and holder of twenty shares of like preferred capital stock of said company, for which he holds certificates for such shares in due form, and signed by the proper officers of said company, with power of attorney authorizing the transfer of such shares to your orator the said Charles Burt, duly executed by the persons in whose names such shares stand registered on the books of said company, and which shares your orator the said Charles Burt is entitled to have standing in his

name on the books of said company, but has been prevented therefrom by the wrongful refusal of the said company to allow such transfer to be made to him upon his demand duly made therefor. 7

And that all the stock of said Company by them held and owned as aforesaid was purchased and acquired by your orators in good faith in the usual course of business, and for full and valuable consideration by them advanced and paid therefor, being the current market value of the stock of said Company at the respective times of their said purchase and acquisition thereof, and that all such stock standing in the names of your orators respectively as aforesaid, was duly and regularly transferred to your orators upon the books of said Company and certificates in due form for the said shares respectively, subscribed in behalf of the said Company by its proper officers in that behalf, to wit., its President and Secretary, were upon such transfers duly issued and delivered to your orators, and are still held by them; and that all such transfers to your orators and stock certificates issued to them were duly accompanied by or based upon the due surrender to said Company for cancellation of due, regular and valid stock certificates of said Company, for a corresponding number of shares which had been theretofore duly issued by said Company as the representative or evidence of proprietorship of so many shares of its capital stock; and that your orators in good faith paid the said price and consideration for said stock so by them purchased and acquired, upon faith of the said certificates for said several shares duly issued by said Company, as aforesaid, and the transfers of such shares duly entered upon the Company's books and duly permitted by it, as aforesaid, and the new certificates so issued to your orators, and that to the best knowledge, information and belief of your orators, the persons from whom they purchased said shares of stock were bona fide holders thereof, for value, who had acquired the same in the due and regular course of business. 8 9

And your orators further show unto your Honors that the said The Erie Railway Company is and at the several times hereinafter mentioned, was a railroad

- 10 corporation, created and organized by and under the provisions of certain Acts of the Legislature of the State of New York hereinafter referred to, and owning and operating a railroad extending from Dunkirk, and likewise from Buffalo, on Lake Erie, in the State of New York, to Piermont and to Newburgh, on the Hudson river, in said State, and between such points running through the State of New York, except for about twenty-six miles of said route, where the line of said road runs through the State of Pennsylvania, and likewise controlling, by means of leases or otherwise, and possessing and operating, a line of railroad extending from its main line aforesaid to Jersey City, in the
- 11 State of New Jersey, opposite to the city of New York, with a ferry connection to the last named city, and thus practically possessing and operating a continuous line of railroad from the city of New York to Dunkirk and Buffalo, on Lake Erie.

That before the organization of the said The Erie Railway Company, the said continuous line of railroad last mentioned, excepting the branch connecting Buffalo with the main line running from Dunkirk, was owned, possessed and operated as aforesaid by the New York & Erie Railroad Company, a company incorporated by the Legislature of the State of New York, entitled "An Act to incorporate the New York & Erie Railroad Company," passed April 24, 1832.

- 12 And upon information and belief your orators further show, that in the year 1860, the said New York and Erie Railroad Company, having become insolvent, and an action having been instituted against the said New York and Erie Railroad Company, in the Supreme Court of this State, on behalf of the trustees, for the holders of the bonds secured by a certain mortgage upon the property and franchises of said company, known as the Fifth Mortgage, for the foreclosure of said mortgage, and the sale of said railroad, and franchises of the New York and Erie Railroad Company, a foreclosure and sale of the property and franchises of the said last mentioned company was made under an Act of the Legislature of the State of New

York, entitled "An Act relating to the foreclosure and 13
 sale of the New York and Erie Railroad," passed April
 4, 1860, wherein and whereby, among other things, it
 was enacted that in the event of the foreclosure and sale
 of the said New York and Erie Railroad, under certain
 mortgages enumerated in said Act, such sale should be
 made subject to certain liens and mortgages mentioned
 in said Act; and in case the same should be purchased
 by Dudley S. Gregory and J. C. Bancroft Davis, trus-
 tees under a certain agreement before made by the said
 company and its creditors, said parties were empowered
 to associate with enough others to constitute with such
 purchasers seventeen persons, who should constitute a
 body corporate, to be called the Erie Railway Company; 14
 and that upon such associates filing in the office of the
 Secretary of State articles of association, as prescribed
 by the said Act, the association should become a body
 corporate, to be known as the Erie Railway Company,
 and should possess all the rights and franchises by the
 law conferred upon the New York and Erie Railroad
 Company. The said associates were in and by the said
 Act required to specify, in the said articles of association,
 the number of shares of capital stock of said company,
 and the par value of each share, and whether any, and
 if so, what portion of said stock was preferred stock;
 and it was in and by said Act further provided and en-
 acted that the whole amount of stock of the said Erie 15
 Railway Company, should not exceed in amount the
 capital stock of the New York and Erie Railway Com-
 pany, and the debt of said last named company, not
 secured by mortgage lien upon the said railroad prop-
 erty and franchises at the time of such sale; and the
 said Act further provided that the unsecured and judg-
 ment creditors of the New York and Erie Railroad
 Company might, in addition to the stock so authorized
 to be created by the Erie Railway Company receive for
 their respective debts preferred stock of the said Erie Rail-
 way Company; that after the passage of the Act last above
 set forth, a sale was made of the property, rights and
 franchises of the New York and Erie Railroad Company

- 16 under a decree of the Supreme Court of the State of New York, for the foreclosure of the said fifth mortgage, pursuant to the provisions of the said Act; and the said Dudley S. Gregory and J. C. Bancroft Davis, as trustees as aforesaid, became the purchasers thereof at said sale pursuant to the provisions of the said Act. That after the said sale, namely, on the 2d day of April, 1861, a further Act was duly passed by the Legislature of the State of New York, entitled "An Act in addition to the Act relating to the foreclosure and sale of the New York and Erie Railroad, passed April 4, 1860," wherein and whereby it was and is provided and enacted that the said Dudley S. Gregory and J. C. Bancroft Davis, and such persons as
- 17 they might associate with them, pursuant to the provisions of the said Act of April 4, 1860, should become a body corporate, as provided by said Act, upon filing articles of association as provided by said Act, in which the common capital stock of the said new company should be stated at an amount not exceeding the outstanding capital stock of the New York and Erie Railroad Company, and the preferred capital stock of the said Company should be stated to be equal to the amount of the total unsecured and judgment debt of the New York and Erie Railroad Company, with interest thereon; and that the par value of each share of said preferred stock, and of said common stock should be one hundred dollars. The
- 18 said last mentioned Act further provided for the issue of said preferred stock to the said unsecured and judgment creditors of the New York and Erie Railroad Company, who should present their claims within a certain time for the ascertainment, by the Trustees, of the amounts of their respective claims, and for the adjudication thereof by a reference in case of dispute; and farther provided, that upon the coming in of the final report of the Referee, the Erie Railway Company should file with the Secretary of State a further certificate, stating the whole amount of preferred stock issued, and to be issued, which it was declared by said Act should not exceed the aggregate amount of debts ascertained by said Trustees, or adjudicated by said Referee; and it was in and by the said Act further

provided, that the amount of preferred and unpreferred 19
stock of the Erie Railway Company should be respectively as declared in said certificates. That after the passage of the said Act of April 2, 1861, the said Dudley S. Gregory and J. C. Bancroft Davis, and their associates, duly organized as a corporation, under the name of the Erie Railway Company, pursuant to the provisions of the said Act, passed April 4, 1860, and of the said Act, passed April 2, 1861; and the said Dudley S. Gregory and J. C. Bancroft Davis conveyed to the said Erie Railway Company all the property and franchises purchased by them, as hereinbefore set forth; and the said Dudley S. Gregory and J. C. Bancroft Davis and their associates, on or about the 30th day of June, 1861, made and filed in the office of the Secretary of State articles of association, as prescribed by the said Acts of April 4, 1860, and April 2, 1861, in which articles of association it was stated that the capital stock of the Erie Railway Com- 20
pany was divided into common and preferred; that the common stock was one hundred and fifteen thousand five hundred shares, of the par value of one hundred dollars each, being equal to the outstanding capital stock of the New York and Erie Railroad Company, and that the whole amount of the preferred stock was to be equal in amount to the total unsecured and judgment debt of the New York and Erie Railroad Company, with interest thereon, when ascertained, pursuant to the provisions of the said Act of April 2, 1861; that by a subsequent Act of the Legislature of the State of New York, entitled 21
“An act concerning the Erie Railway Company,” passed on March 28, 1862, the time limited by the previous Acts within which the holders of unsecured bonds of the New York and Erie Railroad Company, or of coupons upon such bonds, maturing prior to January 1st, 1862, or of judgment debts recovered of said company before the sale, might convert their respective claims into preferred stock of the Erie Railway Company, was extended to the 1st of July, 1862, and the time within which the holders of stock of the New York and Erie Railroad Company might convert the same into common stock of the Erie Railway Company was also extended to the 1st of July,

- 22 1862, payment of the assessment of two and a-half per cent. being required in each case; and the Erie Railway Company was in and by the last-mentioned Act required, after the 1st day of July, 1862, to file in the office of the Secretary of State a statement of the whole amount of the stock of the said Erie Railway Company, both common and preferred, outstanding and issued, upon that day; that the whole amount of the capital stock of the New York and Erie Railroad Company did not at anytime exceed 115,500 shares of \$100 each; and the amount of the total unsecured and judgment debt of the said New York and
- 23 Erie Railroad Company, with interest thereon, did not at the time of the said sale of the property and franchises of the New York and Erie Railroad Company, or at the time of the organization of the Erie Railway Company, as hereinbefore set forth, exceed the sum of \$8,555,000, and that the whole amount of stock, both common and preferred, which the Erie Railway Company was authorized to create, pursuant to the several Acts of the Legislature hereinbefore set forth, did not exceed 201,000 shares, of \$100 each. That on or about the sixteenth day of January, 1862, the said Company, pursuant to the provisions of the said Act of April 2, 1861, filed in the office of the Secretary of State a certificate, stating that the official report of the Referee mentioned in said Act, had
- 24 come in, and that the whole amount of the preferred stock in said Company, issued and to be issued by said Company, was \$8,423,675.50; and on or about the eighteenth of November, 1862, the said Company, in pursuance of the provisions of said Act of March 28, 1862, filed in the office of the Secretary of State a further certificate, which states that the general capital stock of the said Company, outstanding and issued, on the first day of July, 1862, was 114,375 shares of \$100 each, 625 shares of the common stock of the New York and Erie Railroad Company not having been presented for exchange; and that the amount of the preferred stock at the same date was \$8,535,700, and that no further or other certificate of the amount of the

stock of said Company has been filed in the office of 25
said Secretary of State ; that afterwards, on the fourth
day of May, 1864, another Act was duly passed
by the Legislature of the State of New York, entitled
“An Act in addition to an Act entitled ‘An Act
concerning the Erie Railway Company, passed March
28, 1862’”; that in and by the said Act of May 4, 1864,
the Erie Railway Company was authorized and em-
powered to increase its capital stock five millions of
dollars, for the purpose of constructing depots, machine
shops, and other buildings necessary for the business of
the road ; to complete its terminus at Long Dock, oppo-
site the City of New York; to provide additional equip- 26
ment, and for laying double tracks; and the said
company was, in and by the said last mentioned Act,
further empowered to increase its capital stock by an
amount not exceeding three millions in all, for the pur-
pose of paying and cancelling certain bonds issued to
the Comptroller of the State of New York: as by the
said documents and certificates heretofore referred to,
reference thereunto being had, will more fully appear;
but that since the passage of said Act of May 4, 1864,
the said company, by an agreement with the holders
thereof, procured the time of payment of the bonds, 27
therein mentioned to be extended until the year one
thousand eight hundred and ninety-seven, and, there-
fore, the three millions of dollars of additional stock
mentioned in said Act not being required for the purpose
for which it was authorized, the said company has not
issued the same, and has no longer power or authority to
issue the same.

That on the 31st day of December, 1865, the total
amount of capital stock issued by the said Erie Railway
Company, as appears by the stock books of said com-
pany, and by the annual report of the condition and
operations of said company, made by the directors of
said company to its stockholders for the year ending
the 31st of December, 1865, and published by said
company, was 251,058 shares of \$100 each, making

28 the total capital stock of the said company \$25,105,800 ; which amounts of stock consisted of \$8,535,700 of preferred stock, and \$16,570,100 of common stock, said amount of common stock being composed of \$11,550,000, or thereabouts, of common stock which had been issued and exchanged for that amount of the stock of the New York and Erie Railroad Company, and \$5,000,000, or thereabouts, of common stock which had been issued subsequently to the passage of said Act of May 4th, 1864.

29 And your orators further show that the preferred stock aforesaid, by the terms and conditions under which it was issued, is entitled, in preference over the common stock, to dividends up to the rate of seven per cent. per annum, payable semi-annually out of the nett savings of said railroad, provided there be such nett earnings during the current year after payment of mortgage interest.

And your orators further show unto your honors, that at an election of Directors of the said The Erie Railway Company, held in the month of October, 1867, the following named persons were elected to be such Directors for the term of one year then next following, that is to say : John S. Eldridge, Jay Gould, James Fisk, Jr., Frederick A. Lane, Henry Thompson, Levi Underwood, Josiah Bardwell, Eben D. Jordan, James S. Whitney, William Evans, Alexander S. Diven, J. C. Bancroft
30 Davis, Homer Ramsdell, Dudley S. Gregory, William B. Skidmore, Frank Work, and George M. Groves.

And upon information and belief your orators further show, that of such persons, the first named nine, being a majority of the board, had not previously been Directors, except the said Lane, who had first come into the board one year previously.

That the said election in October, 1867, was the result of a combination in which the chief movers were the said John S. Eldridge and the defendants Jay Gould, James Fisk, Junior, and Frederick A. Lane ; and the election of said new members, all of whom were in accord and confederated for a common purpose, in place of an equal number of the then existing board who were dis-

placed, was accomplished by the said Eldridge, Gould, 31
 Fisk and Lane, and their confederates chiefly or entirely
 by illegitimate means, viz. : by the purchase of proxies
 for voting, and by borrowing or purchasing and holding
 for the briefest possible period, shares of stock in order
 that the same might stand in the names of some of said
 confederates or parties acting in concert with them, or
 whose proxies they could obtain, on the day of closing
 the transfer books preparatory to the election, although
 such shares might be returned or resold and parted with
 immediately afterwards and delivered by means of
 handing over the stock certificate with power of attorney
 to transfer ; and the plan and scheme with which said 32
 confederates started their operations, and which they
 were enabled to accomplish by the machinery aforesaid,
 was to obtain the control of a great corporation without
 any substantial or real proprietorship in any considerable
 portion of its stock, in order that such control might be
 made subservient to the private gain and advantage of
 said confederates, without the least regard to the interests
 of such corporation, or the equitable rights of its real
 shareholders.

That the chief immediate object of the said confede-
 rates in obtaining the control of said corporation at that
 time, was to commit the said company to engagements
 of large amounts in aid of a very speculative and hazard-
 ous railroad enterprise, viz., the building of a railroad 33
 known as the Boston, Hartford & Erie Railroad, in which
 said confederates or some of them, and particularly said
 Eldridge, were then largely interested, which object was
 accomplished almost immediately after said election by
 means of a resolution of said new Board of Directors
 purporting to bind the Erie Railway Company to a
 guaranty of bonds of the Boston, Hartford and Erie
 Railroad Company to the amount of five millions of dol-
 lars, and which bonds, purporting to bear such guaranty,
 executed on behalf of said Erie Railway Company, under
 the direction of said new Board of Directors, or of an
 Executive Committee, composed of some of its members,
 were subsequently put into circulation. That the ulto-

34 rior designs for their personal interests of the combination thus obtaining the control of the Erie Railway Company at the election in October, 1867, beyond the said guaranty of the bonds of the Boston, Hartford and Erie Railroad, had not matured or were not developed until some months subsequent to the said election.

And your orators further show, that the said Boston, Hartford and Erie Railroad Company has recently fallen into great pecuniary discredit, and failed in its payments, and that attachments for large amounts have been issued against it by its creditors.

35 And your orators further show, that upon an investigation recently made under some authority in the State of Massachusetts, into the affairs of the Boston, Hartford and Erie Railroad Company it has been developed, and your orators upon information and belief charge the truth to be, that the money by means of which the said Gould, Fisk, Lane and Eldridge were enabled to accomplish the election of themselves and their confederates as directors of the Erie Railway Company, in October, 1867, was furnished and supplied for the purpose by the Boston, Hartford and Erie Railroad Company. And upon information and belief your orators allege that shortly before the said election in October, 1867, a large sum of money belonging to the Boston, Hartford and
36 Erie Railroad Company, amounting, as your orators understand, to seventy thousand dollars or thereabouts, was placed in the hands of said Jay Gould to be by him applied to purchasing proxies for voting at such election, and otherwise in furtherance of so controlling such election as to elect thereat the said Eldridge, Gould, Fisk and Lane, and those then in alliance with them, and that said Gould accordingly so used and applied such money, save so much thereof as he may have kept for himself, and that it was by means of the use of such money of the Boston, Hartford and Erie Railroad Company, that the election in October, 1867, of said Eldridge, Gould, Fisk, and Lane and their confederates to be directors of the said Company was accomplished, and the same would not and could not

have been accomplished but for the means thus used. 37
 And your orators charge that the furnishing of such money by the Boston, Hartford and Erie Railroad Company, the use thereof for the purpose of controlling such election, and the accomplishment by means thereof of the election of the said Eldridge, Gould, Fisk, and Lane, and their confederates, and the said subsequent guaranty of five million dollars of the bonds of the Boston, Hartford and Erie Railroad Company, by or in the name of the Erie Railway Company in virtue of the action of the Board of Directors of the Erie Railway Company elected by the means aforesaid, were all parts of a fraudulent conspiracy to which said Eldridge, Gould, Fisk, and Lane were parties, by which it was arranged between them and the other confederates that the pecuniary means for so controlling and accomplishing such election should be furnished by the Boston Hartford and Erie Railroad Company, and that in return or as compensation for being thus furnished with the means of foisting themselves into the said Board of Directors, the said Gould, Fisk and Lane should betray their trust and duty as directors by voting and using their influence in favor of such guaranty of the bonds of the Boston, Hartford and Erie Railroad Company, by or in the name of the Erie Railway Company, to the prejudice and in disregard of its interests, and that the said Gould, Fisk and Lane, 38
 after giving such return to the power which had been the means of their election, should find their own compensation for their services in the premises in such personal advantages as they could obtain for themselves by means of their trust and power as such directors; and that all the said schemes of the said confederates were eventually carried out to the satisfaction and great profit of all of them. 39

And upon information and belief your orators further state, that in the month of February, 1868, the ultimate purposes of the combination who had obtained control at the last preceding election, as yet remaining for the most part unexecuted as aforesaid, the condition of the said

40 Erie Railway Company, in respect of its indebtedness and share capital, was substantially as follows :

First mortgage bonds.....	\$3,000,000
Second mortgage bonds.....	4,000,000
Third mortgage bonds.....	6,000,000
Fourth mortgage bonds.....	4,441,000
Fifth mortgage bonds.....	926,500
Sterling bonds, being bonds not secured by mortgage, prepared for negotiation in Europe to the amount of about five millions of dollars, of which there had been negotiated about \$4,000,000.....	4,000,000
Preferred stock.....	8,536,910

41 Common stock, about..... 24,265,000
 making in the whole about \$18,360,000 of mortgage bonds, about \$4,000,000 of unsecured bonds, about \$8,500,000 of preferred stock, and about \$24,250,000 of common stock—this increased amount of common stock over the amount of such stock existing at the close of the year 1865 being attributable, as your orators are informed and believe, to an issue of such stock to the amount of \$5,000,000, or thereabouts, upon a transaction in the year 1866 between the said Company and Daniel Drew, its former Treasurer, who made large cash advances under a special agreement, and on whose behalf it was claimed, as your orators understand,

42 that such stock, or a large part thereof, had been issued in exchange for convertible bonds of said Company, and to further issues of common stock between December, 1865, and February, 1868, to the amount of \$1,894,000, or thereabouts, upon the conversion of other convertible bonds and in exchange for bonds or stock of other Corporations consolidated with or whose roads were leased to The Erie Railway Company. That up to this time, viz., February, 1868, the said Company had not only met the interest upon its bonds, but had also paid regular cash dividends upon said eight and a half millions of preferred stock at the rate of seven per cent. per annum, and had also paid dividends, although not regularly, upon its common stock; and the market

value of its common stock, and at which sales of such 43
common stock in large quantities could be readily made,
was between seventy and eighty per cent., giving to the
whole amount of its common stock then issued and out-
standing a market value of from seventeen to nineteen
millions of dollars, or thereabouts.

That at this time the said Company owned and had
in full and successful operation its continuous line of
railroad from Dunkirk and Buffalo to Newburgh and
Piermont, and likewise by means of the roads in New
Jersey leased and otherwise controlled by it as aforesaid,
and its ferry above mentioned, held and maintained, the
extension and connection of its said main line to and with
Jersey City and New York City, and had other branch
roads and extensive and valuable business connections, 44
and was substantially, though not nominally, the owner
of a very extensive and valuable property at its Jersey
City terminus, known as the Long Dock property, hav-
ing a large water front and very costly and valuable im-
provements, the said Long Dock property standing in
the name of a corporation known as the Long Dock
Company, but the Erie Railway Company being the
lessees thereof and the chief stockholders of the Long
Dock Company ; and likewise at this time, viz., February,
1868, the said The Erie Railway Company owned the
very large and valuable rolling stock and equipment requi-
site for the successful operation of its said main line of 45
road and the several branches thereof, and held and
owned extensive machine shops, depots, and other struc-
tures proper for use in and about the maintenance and
operation of its road and the conducting of its business,
and as your orators are informed and believe, at this
time the main road, operated by the said Company, was
four hundred and fifty-nine miles long, and the branches
and leased roads which it operated were three hundred
and fourteen miles long, and it had upon its main line,
double track to the extent of three hundred and sixty-two
miles or thereabouts, including sidings, and by means of
the operation of its entire road and branches as aforesaid,
the said Company was then in receipt of a very large in-

46 come, the average gross earnings of said Company for the three years then last past having been about fifteen millions of dollars per year.

And upon information and belief your orators further show unto your Honors that in the said month of February, 1868, the said defendants, Jay Gould, James Fisk, Junior, and Frederick A. Lane, combining and confederating together, and with certain others of the directors of the said the Erie Railway Company, devised and put in execution the scheme of making further large issues of common stock of the said company, under color of the authority, by them alleged in that behalf to be conferred by the tenth subdivision of the twenty-eighth section of the general railroad act of the State of New York, entitled "An Act to authorize the formation of railroad corporations, and to regulate the same," passed April 2, 1850, and which they claimed to be applicable to the Erie Railway Company, notwithstanding the special provision of the above mentioned statutes, under and in accordance with which the Erie Railway Company was created; by which said tenth subdivision of said twenty-eighth section of the general railroad law it is provided that the corporations thereby referred to shall have power "from time to time to borrow such sums of money as may be necessary for completing and finishing, or operating their railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted by the company for the purposes aforesaid; and the directors of the company may confer on any holder of any bond issued for money borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of said company, at any time not exceeding ten years from the date of said bond, under such regulations as the directors may see fit to adopt."

And in execution of such plan and scheme the said confederates caused to be made and executed, in the name and on behalf of said company, the bonds of said company to the amount of five millions of dollars, pur-

porting therein to confer upon the holder thereof the 49
 right to convert the principal sum specified therein into
 stock of the said company, and thereupon made a pre-
 tended issue and negotiation of said convertible bonds to
 some of the said directors or their confederates, and
 immediately, or almost immediately thereafter, and on
 or about the nineteenth day of the said month of
 February there was made a conversion, or pretended
 conversion, of the said five millions of dollars of bonds
 into stock of the Erie Railway Company; and on the
 basis of such conversion or pretended conversion of
 said bonds, there were issued by and in the name of the
 Erie Railway Company, by procurement, and under the 50
 direction of said Gould, Fisk and Lane, and their con-
 federates, certificates for common stock of the said com-
 pany to the amount of fifty thousand shares, or five
 million dollars, which stock was thereupon put upon the
 market and sold to *bona fide* purchasers. And your
 orators further show that, as they are informed and be-
 lieve, the only consideration which the said company
 really or truly received for the five millions of convert-
 ible bonds issued as aforesaid, was so received from and
 out of the proceeds of the sale of the said fifty thousand
 shares of stock, into which such bonds were converted
 or pretended to be converted; that your orators are
 ignorant as to the exact amount realized by the said 51
 Gould, Fisk and Lane, and their confederates, as
 proceeds of the issue and sale of said fifty thousand
 shares of stock, and as to the methods and forms by
 them adopted for and in respect of such sale, and
 the accounting, or pretended accounting, to said company
 for the consideration of the issue of such five millions of
 convertible bonds or the stock into which the same were
 converted, but they are informed and believe and
 charge, that the amount which was by them accounted
 for or pretended to be accounted for to said company
 in that behalf, or which said company in any way re-
 ceived in respect thereof, did not exceed $72\frac{1}{2}$ per cent.
 of the par value thereof, or the sum of \$3,325,000

52 but that in fact a much larger sum than this was directly or indirectly received and realized therefrom by the said Jay Gould, James Fisk, Junior, and Frederick A. Lane, and by their confederates by or with their procurement or concurrence, and that divers methods of indirection, evasion and fraud, with the particulars of which your orators are unacquainted, were by them adopted in order to cover up and conceal the said excess, and deprive the said company of the benefit thereof, and enable the said confederates to retain the same for their private profit and advantage, and your orators
 53 are likewise ignorant as to the proportions in which said Gould, Fisk and Lane shared between themselves the amount thus wrongfully withheld by them from the company ; but your orators charge that the said Gould, Fisk and Lane respectively are legally and equitably accountable to the said company, not only each of them for the share of such fraudulently withheld moneys which each of them received and retained for himself, but likewise for the share thereof received by the other two or either of them, in combination and confederacy with him as aforesaid, and likewise for all portions of such withheld moneys received or retained by any others
 54 of the said confederates, or by any person or persons whomsoever, by his procurement or direction, or with his concurrence or assent.

And upon information and belief your orators further show that in or about the month of March, eighteen hundred and sixty-eight, there was issued and put upon the market and sold to *bona fide* purchasers an additional fifty thousand shares, or five millions dollars in amount, of the common stock of the said Erie Railway Company, and that, as your orators believe, the same was done under the following circumstances, viz. : the said Gould, Fisk and Lane and their confederates, having determined upon the issue of such further quantity of stock by the before mentioned machinery of issuing convertible bonds and converting the same into stock, had caused to be prepared and executed

in the name and as on behalf of said Company its bonds 55
 for five millions of dollars, purporting therein to confer
 upon the holder thereof the right to convert the same
 into an equivalent amount at par of the capital stock of
 said Company, and said convertible bonds were delivered
 into the hands of and pretended to be issued to some
 person or persons acting in confederacy with the said
 Gould, Fisk and Lane and their associates in said enter-
 prise, but no money was actually loaned or advanced to
 said Company upon said bonds, nor any consideration
 whatever received by said Company for the issue or de-
 livery by it of said bonds as aforesaid; that the inten-
 tions of the persons then in control of said Company to 56
 make such further issue of its stock through such ma-
 chinery of convertible bonds became known or suspected,
 and an injunction to restrain such issue of stock was
 granted by the Supreme Court of the State of New York,
 and duly served, but that the defendants Gould, Fisk and
 Lane, with full notice of such injunction, determined
 notwithstanding and in violation of the same, to carry out
 their design of making such further issue of stock, and
 accordingly the said James Fisk, Junior, with the advice,
 connivance and concurrence of said Gould and Lane,
 caused to be filled out certificates for such additional fifty
 thousand shares of stock, using for the purpose stock 57
 certificates which had been signed in blank by Alexander
 S. Diven, the Vice-President, and Horatio N. Otis, the
 Secretary of said Company, for the purpose of being used
 upon ordinary transfers of the existing stock of the Com-
 pany; that two hundred and fifty of said certificates were
 for one hundred shares each of the capital stock of said
 Company, and certified that the firm of Smith, Gould,
 Martin and Company, a firm of stock brokers, of which
 the defendant Jay Gould was then a member, were the
 owners and holders of the stock mentioned in the said
 certificates; that two hundred and fifty others of said
 certificates were for one hundred shares each of the capital
 stock of said Company, and certified that the firm of
 Fisk, Belden & Company, a firm of stock brokers, of which

58 the defendant James Fisk, Junior, was a member, were the owners of the stock mentioned in the said certificates and thereupon, by the procurement and direction of the said Jay Gould and James Fisk, Junior, combining and confederating with the said Lane and others, the said stock certificates, purporting to represent such fifty thousand shares of the capital stock of said Company, were put upon the market in the City of New York, and sold and delivered to *bona fide* purchasers, who purchased and paid for the same, believing the same to represent valid and *bona fide* shares of the capital stock of the Erie Railway Company; that such certificates were in the usual form of certificates of stock of the said Com-

59 pany, bore the genuine signatures of the proper officers, and upon their face appeared to be genuine certificates for valid shares of said stock, and that powers of attorney in the usual form to transfer the stock mentioned in said certificates, respectively, were endorsed upon the said certificates, respectively, and signed by the said firm of Smith, Gould, Martin & Company, or Fisk, Belden & Company, in whose name such stock appeared by the certificate to stand; that the said certificates, and the stock purporting to be represented thereby, were sold in part by Smith, Gould, Martin & Co., and in part by Fisk,

60 Belden & Co., and the price upon such sales of said fifty thousand shares of stock by the procurement and direction of said Gould and Fisk combining and confederating with the said Lane and others, as aforesaid, was about eighty per cent. of the par value thereof, or the sum total of \$4,000,000; that only a portion of this amount, viz., \$3,625,000, or at the rate of seventy-two and a half per cent. for the stock was ever paid over, or in any way accounted for to the said The Erie Railway Company, and the residue of such proceeds, being the sum of \$375,000, was wrongfully retained and withheld from said company by the said Gould and Fisk, in combination and confederacy with said Lane and others: your orators are ignorant as to the proportions in which said Gould, Fisk and Lane shared between themselves the amount thus

wrongfully withheld from the company, or as to how much of said sum they may have paid over to other persons their confederates, but your orators charge that divers methods of indirection, evasion and fraud, with the particulars whereof your orators are unacquainted, were by them adopted in order to cover up and conceal the true character of the said transaction, and the amount realized therefrom by the said Gould, Fisk and Lane and their confederates, for their personal use and benefit; and your orators charge that the said Gould, Fisk and Lane, respectively, are legally and equitably accountable to the said Erie Railway Company not only each of them for the share which he actually retained to himself or received from the excess of the actual proceeds of the sale or disposal of the said last mentioned fifty thousand shares of stock over and above the seventy-two and half per cent of the par thereof which was accounted for to the said company, but likewise for the shares of such excess retained or received by the other two or either of them in combination and confederacy with him as aforesaid, and likewise for all such portions of said excess as were received or retained by the said firms of Smith, Gould, Martin and Co., and Fisk, Belden & Co., respectively, or by any of the confederates of the said Gould, Fisk and Lane, or by any other person or persons whomsoever by the procurement or with the connivance, concurrence or assent of the said Gould, Fisk and Lane, or either of them.

And upon their information and belief, your orators further state, that at the time when the said stock certificates for the said last mentioned fifty thousand shares of stock were sold, and the money received from bona-fide purchasers for the fifty thousand shares of stock purporting to be represented thereby as aforesaid, neither the said Jay Gould, James Fisk, Junior, Smith, Gould, Martin & Co., or Fisk, Belden & Co., nor any other person or persons whomsoever had paid or given, nor had the Erie Railway Company in any way received, any consideration whatever for the 50,000 shares of stock

64 purporting to be represented thereby, and that the only basis or pretended basis for the holding of said fifty thousand shares of stock by the said Smith, Gould, Martin & Co., and Fisk, Belden & Co., respectively, was the above mentioned \$5,000,000 of convertible bonds, which in the same month of March had been executed and delivered by or in the name of said company as aforesaid, but for which no consideration whatever had been received; and that the said fifty thousand shares of stock represented by the said certificates in the names of Smith, Gould, Martin & Co. and Fisk, Belden & Co., as aforesaid, were pretended to be based upon conversion into such stock of such five millions of dollars of convertible bonds, and upon nothing else, but that in fact

65 no consideration had been received by the Erie Railway Company either for such convertible bonds or for such stock until after such stock was sold and disposed of by said Fisk and Gould and their confederates through Smith, Gould, Martin & Co. and Fisk, Belden & Co., as aforesaid, and that nothing was ever received by said company therefor in any way or manner whatsoever, otherwise than from and out of the proceeds of such sales of said stock, and that the whole amount of the proceeds of such sales was, when received, the property of the Erie Railway Company, and should have been accounted for and paid over to it, and that whatever portion of such proceeds was in any way, directly or indirectly, or upon

66 any pretext or allegation whatsoever, withheld from delivery and payment over to the Erie Railway Company, was so withheld wrongfully and fraudulently, and that all parties concerned in such withholding are accountable and liable to said company for the amount so withheld.

And your orators further show, that the one hundred thousand shares of new stock of the Erie Railway Company issued in February and March, 1868, under the circumstances above set forth, have been from time to time sold and resold, and dealt in, in the New York market and elsewhere, and have from time to time

been purchased, received and paid for by bona fide 67
 purchasers as genuine and regular stock of the said
 Company without knowledge or notice of the circum-
 stances under which such stock was originally issued,
 or of any circumstance affecting the validity thereof;
 and said shares have been from time to time transferred
 and re-transferred on the books of said Company, and
 have become so mingled with the original stock of the
 said Company antecedently issued that, as your orators
 are informed and believe, the same cannot now be dis-
 tinguished or separated from such prior stock, and that
 the said Company, under the management and direction
 of the persons who control its affairs, and of those who
 have controlled the same since February and March,
 1868, has continuously recognized the said one hundred
 thousand shares as genuine stock of the said Company. 68

And your orators, upon their information and belief,
 further show, that almost immediately after the above
 mentioned transaction of issuing the said 50,000 shares
 of stock in March, 1868, in violation of the injunction
 aforesaid, the said Gould, Fisk and Lane, with certain
 of their confederates who had participated in such trans-
 action, in order to avoid the legal consequences of the
 acts which they had thus committed and the punish-
 ment therefor which they had cause to apprehend, and
 in order to withdraw the pecuniary fruits of the said
 operation from the jurisdiction of the Courts of the State 69
 of New York, fled from the City of New York, carrying
 with them many millions of dollars, the property of the
 Erie Railway Company, being proceeds of such 100,000
 shares of stock, or of such convertible bonds under pre-
 tence of exchanging which such stock had been issued,
 and established their quarters in Jersey City, and so re-
 mained established for many weeks, keeping with them
 there the said money, save so much thereof as they from
 time to time wasted, spent and wrongfully disposed of,
 and until finally they succeeded, by the fraudulent and
 lavish use of a great amount of the money of said Com-
 any and by other corrupt and fraudulent means, in ef-

70fecting such arrangements as that they deemed it safe again to trust their persons in the city of New York, when they returned thereto, and were relieved from all embarrassments on account of their violation of said injunction by the imposition of a nominal fine of \$10 each, or some such proceeding.

That during such period, the said Gould, Fisk and Lane, and their said confederates, maintained in their employment, with a view to their personal protection against the consequences of their illegal acts aforesaid, a large number of paid guards and defenders, and also hired and employed large numbers of persons for the purpose of obtaining immunity for such acts by means of
 71legislative action in the States of New York and New Jersey respectively, and also in negotiating and accomplishing such arrangements otherwise as would enable them to return to the city of New York without being punished for their said acts; and that all the expenses by them incurred in these several ways, as also divers other expenses to an enormous amount, which grew out of and were occasioned by their said wrongful acts, the particular nature whereof your orators cannot more fully specify, but which they charge were in no sense legitimate or lawful charges against the said company nor properly payable out of its funds, were paid out of the
 72funds of the said Erie Railway Company by the direction and procurement, and with the connivance and assent of the said Gould, Fisk and Lane, and their confederates aforesaid; and your orators, upon their information and belief particularly say, that during the period aforesaid the said Jay Gould went to the city of Albany where the Legislature of the State of New York was then in session, taking with him directly or indirectly for use there, or having placed under his control, so that the same could be made use of by draft or check drawn from thence, a large amount of the moneys and funds of the Erie Railway Company, amounting, as your orators are informed and believe, to several hundred thousand dollars, and which they believe was part of the proceeds

of the said one hundred thousand shares of new stock 73
 or \$10,000,000 of convertible bonds, which money
 was intended to be used, and as your orators be-
 lieve and charge, was in fact used, by the said Jay
 Gould, with the advice and concurrence of the said Fisk
 and Lane and other of their said confederates, for the
 purpose of directly or indirectly influencing and obtain-
 ing legislative action from the said Legislature in further-
 ance of the views and objects of the said Gould, Fisk
 and Lane and their confederates, and with a view to
 obtaining immunity for their misdeeds in respect to the
 issue of such convertible bonds and stock and the trans-
 actions connected therewith, and for other uses and pur-
 poses which were wholly illegitimate, and not legal
 or proper charges against the Erie Railway Com-
 pany or its funds, and that the moneys of the 74
 said company thus wrongfully used and applied
 have never been refunded to it, nor has there
 been any legal or valid accounting to said com-
 pany therefor, and your orators charge that by
 reason of their said conduct respectively, and of the said
 confederacy, the said Gould, Fisk and Lane are, and
 each of them is, justly and legally accountable to the
 said company for the whole amount of the moneys of
 the said company thus illegally and wrongfully expend-
 ed or used, by the hands of whichever of them the
 particular use or expenditure may have been in fact
 made, and that they are, and each of them is legally lia-
 ble to said company for the whole amount of such mon- 75
 eys, with interest thereon.

And your orators further show unto your Honors that
 the issuing of the said convertible bonds, and of the said
 one hundred thousand shares of stock into which the same
 were converted, was substantially legalized by an Act of
 the Legislature of the State of New York entitled, "An Act
 in relation to the Erie, New York Central Hudson River
 and Harlem Railway Companies," passed April 21, 1868,
 by which Act it is declared (Section 1.) as follows: "It
 shall be lawful for the Erie Railway Company to use the

76 money realized from the convertible bonds issued by the said company, on the 19th day of February, and on the third day of March, 1868, the said bonds amounting in all to \$10,000,000 for the purpose of completing, furnishing, and operating its railroad, and for no other purpose. Nothing in this Section contained shall affect any right of action of any person against any officer or agent of the Erie Railway Company, nor shall it affect any action or proceeding now pending save as herein expressly provided, nor shall anything therein contained be held or construed to affect any liability civil or criminal of any officer or agent of the said Erie Railway Company or of any other person. The use of the moneys in this Section mentioned by any officer or agent of said Railway Company, for any other purpose than as is herein mentioned, shall be a felony, punishable upon conviction thereof by imprisonment in the State prison, for not less than two nor more than five years."

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And upon information and belief your orators further show unto your Honor that in the spring or summer of the year 1868, the said Gould, Fisk and Lane, entered into and carried on negotiations with the said John S. Eldridge, the then President of the Erie Railway Company, to the end and for the purpose of inducing the said Eldridge to retire from such Presidency, and leave the control of the said company entirely in the hands, or subject to the direction of said Gould, Fisk and Lane, in consideration of great benefits and advantages to be granted to said Eldridge, or to the Boston, Hartford and Erie Railroad Company, wherein he was largely interested, from and out of the funds and credit, and at the cost and risk, of the Erie Railway Company; in pursuance and as the result of which negotiations, it was finally arranged and agreed between said parties that the said Eldridge should resign his Presidency, and that the Erie Railway Company should purchase the bonds of the Boston, Hartford and Erie Railroad Company to some very large amount, and as the plaintiffs believe and charge to the amount of \$5,000,000, or there-

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abouts, and in execution or part execution of 79
 such arrangement, the said John S. Eldridge,
 in or about the month of July, 1868, resigned
 the Presidency of the said Erie Railway Com-
 pany, and the said Jay Gould was thereupon at once
 made President in his place ; and at or about the same
 time the said Gould, Fisk and Lane secured the control
 of the executive committee of said company by becom-
 ing three of its five members ; and in further part-execu-
 tion of the said arrangement the Erie Railway Company,
 by the procurement or direction, or with the assent or
 concurrence of said Gould, Fisk and Lane, purchased
 such bonds of the Boston, Hartford and Erie Railroad
 Company, to the amount of five millions of dollars, at 80
 such price as had been agreed on therefor, the exact
 amount whereof is unknown to your orators, and paid
 for the same either partly in cash from the funds of the
 Erie Railway Company, and partly in the accept-
 ances of said company, or wholly in such acceptances,
 and that all such-acceptances of the Erie Railway Com-
 pany as were given for such bonds of the Boston, Hart-
 ford and Erie Railroad Company were eventually paid
 out of the funds of the Erie Railway Company with the
 assent and concurrence, and under the management and
 direction of said Gould, Fisk and Lane, and of each of
 them, as your orators are informed and believe. 81

And your orators as they are advised and believe,
 charge that the said transaction of purchase of bonds of
 the Boston, Hartford and Erie Railroad Company, and
 payment for the same out of the funds of the Erie Rail-
 way Company was illegal and unauthorized, and beyond
 the corporate powers of the Erie Railway Company, and
 in violation of the duty of all the directors and officers
 of the Erie Railway Company who concurred therein
 or assented thereto, and that as your orators are informed
 and believe, as a financial measure, such purchase was
 improvident and disastrous, and eventuated in a large
 loss to the Erie Railway Company, part of which loss
 was manifested by a direct sale of the bonds at much
 less than cost, and other part of said loss was covered up

82 and concealed by means of the sale, or pretended sale, of such bonds, at prices appearing to show no loss, or but a small one, but which sales, or pretended sales, were in fact but parts of other contracts and arrangements between the Erie Railway Company and the parties who were induced to purchase such bonds, and nominally allow such price therefor, by reason of other stipulations of the same arrangement which were greatly to the benefit and advantage of the said other parties so purchasing, said bonds, and imposed great burden and loss upon the Erie Railway Company, but your orators cannot more particularly specify the details of the transactions by which the Erie Railway Company ultimately sold or disposed of such bonds of the Boston, Hartford and Erie Railroad
83 Company.

And your orators upon their information and belief, expressly charge that the aforesaid illegal, unauthorized, improvident and disastrous purchase of the bonds of the Boston, Hartford and Erie Railroad Company, by the Erie Railway Company, was made with the concurrence and assent of said Gould, Fisk and Lane, and of each of them, and that although it may be true that at some stages of the proceedings in which the said Eldridge was endeavoring to bring about such purchase of said bonds by the Erie Railway Company, the said Gould, Fisk and Lane opposed him therein, they did afterwards
84 withdraw such opposition, and yield to the making of such purchase, and that they were induced so to do, knowing it to be not only illegal but greatly prejudicial to the pecuniary interests of the Erie Railway Company, from the corrupt and fraudulent motive on their part of thereby inducing the said Eldridge to resign his Presidency and withdraw from further active interference in the company's affairs, and of their being consequently enabled to bring about the substitution of said Gould as President, and the acquisition of the complete practical control of said company by said Gould, Fisk, and Lane; and that at the time when such negotiations which finally resulted in such purchase of the Boston, Hartford and Erie Railroad Company's bonds and the retire-

ment of said Eldridge from the Presidency, were going- 85
 on, the said Gould, Fisk, Lane and Eldridge, had so far
 concentrated in their own hands the power of manage-
 ment and control of the said The Erie Railway Com-
 pany, that the other directors, except the immediate
 friends of said Eldridge, had little influence, and most of
 them were in great measure ignorant of what was trans-
 piring in relation to the company's affairs, and almost
 wholly so as to what was intended.

And your orators, upon their information and belief
 further show, that at or about the same period when the
 above mentioned negotiations between said Gould, Fisk,
 Lane and Eldridge were going on, the said Gould, Fisk,
 Lane and Eldridge were also engaged in negotiations 86
 for obtaining the settlement, discharge and discontinu-
 ance of certain suits and litigations, in which they were
 involved, and to which or some of which the said
 company, which they practically controlled as afore-
 said was a party, which suits had grown out of the
 above mentioned acts and proceedings relating to
 the \$10,000,000 of convertible bonds and stock issued
 in February and March, 1868, and other illegitimate
 and wrongful acts and proceedings of the said four
 parties and their confederates in and about the
 affairs of the Erie Railway Company, and such ne-
 gotiations also had reference in very large measure
 to the supposed fact that one Cornelius Vanderbilt, a
 capitalist of great wealth and much power, was sustain- 87
 ing and promoting said suits and litigations, although
 his name did not appear therein as a party; and it was
 also an object of said Gould, Fisk and Lane in such nego-
 tiations to induce the withdrawal from said Board of
 Directors of Frank Work, one of its members, who was
 hostile to them and their projects, and understood to be
 in alliance with the parties who were carrying on and
 promoting the said adverse suits and litigations.

That the said Gould, Fisk, Lane and Eldridge brought
 these negotiations also to the point of an arrangement
 which was so far satisfactory to them, as that they were
 content to enter into it, and it was accordingly carried

88 out and put in execution in or about the month of July, 1868, and that by such arrangement the said Gould, Fisk and Lane obtained the discontinuance and withdrawal of the said adverse suits and litigations, which had been occasioned solely by the wrongful, illegal and fraudulent acts of themselves and their confederates—their own personal relief from accountability in and by means of such suits for their wrongful conduct and for the moneys of the Erie Railway Company which they had illegally retained—the withdrawal of said Frank Work from the Directorship—and the quieting of the opposition of said Cornelius Vanderbilt to the then past and proposed future spoliation of the Erie Railway Company's funds, property and credit by and on the part of said Gould, Fisk and Lane and their confederates: all which ends and objects were in the interest and for the private and personal gain and advantage of the said Gould, Fisk and Lane and their confederates, and were not for the benefit or in the interest of the Erie Railway Company but such ends and objects were accomplished by said Gould, Fisk and Lane, not at all at their own cost, but solely at the expense and risk of the Erie Railway Company, and mainly if not entirely by the payment of an enormous amount of money from the funds of the Erie Railway Company to the parties with whom such settlement was effected as the consideration for such settlement, and for the personal objects and advantages thereby secured to said Gould, Fisk and Lane and their confederates, but not in payment or discharge of any legal claim or demand existing against The Erie Railway Company in favor of such parties or any of them.

90 And your orators upon their information and belief specify the following named payments, as having been in the carrying out of the aforesaid arrangement, made out of the funds of the Erie Railway Company, by or under the procurement, arrangement, direction, and control of said Gould, Fisk and Lane respectively and their confederates, or with their concurrence or assent, that is to say :

1. The sum of \$429,000 or thereabouts paid in settlement of a suit of one Richard Schell, and in compro-

mise or discharge of some claim made by him, which 91
 suit was solely occasioned by and founded upon the
 wrongful acts of the said Gould, Fisk, Lane and Eldridge
 and their confederates, and which claim, so far as it
 existed, was against such parties or some of them per-
 sonally, and was not a legal or valid demand against
 the Erie Railway Company.

2. The payment to said Cornelius Vanderbilt of a
 bonus or subsidy of \$1,000,000, which was not for
 or upon account of any legal claim or demand of said
 Vanderbilt against the Erie Railway Company, but was
 founded and made upon considerations and motives per-
 sonal to the said Gould, Fisk, and Lane, and their con-
 federates.

3. The purchase from said Cornelius Vanderbilt of 92
 50,000 shares of stock of the Erie Railway Com-
 pany at the rate of seventy per cent. of its par value or
 thereabouts, and at a price greatly exceeding the then
 market value of such stock, for which 50,000
 shares there was paid to the said Vanderbilt from the
 funds of the Erie Railway Company, the sum of
 \$3,500,000 or thereabouts, which purchase of said
 stock, by or on behalf of said Company, was not
 only wholly illegal and unauthorized, but grossly
 improvident, wasteful and fraudulent, and eventua-
 ted in a very large loss to the Erie Railway Com-
 pany upon its ultimate sale and disposition of such stock; 93
 but as to the exact amount of such loss your orators are
 ignorant.

And your orators further show unto your Honors, that
 as they are informed and believe there were, upon occasion
 of the settlement last aforesaid, and in connection there-
 with, or otherwise at about the same period, divers other
 large sums of money paid from the funds of the Erie Rail-
 way Company, by or under the procurement, management,
 direction and control of the said Gould, Fisk and Lane re-
 spectively and their confederates, or with their concurrence
 and assent, for uses and purposes which were in no wise

94 legitimate, proper or legal charges against or payments for proper account of the Erie Railway Company, but were for the personal benefit or advantage of the said Gould, Fisk and Lane respectively, or their confederates; and that at about the same time as your orators are informed and believe, a further considerable sum of money amounting to between twenty and fifty thousand dollars, as your orators believe, was wrongfully received out of the funds of the Erie Railway Company by said Gould and Fisk, or by one of them, professedly for or on account of some alleged claim or demand of said Gould and Fisk, or one of them, against the Erie Railway Company, which claim or demand was wholly illegal
 95 and unfounded; but your orators are unable to give any more particular statement in relation to the several wrongful payments out of the funds of the Erie Railway Company herein last above mentioned.

And your orator further show unto your Honors, as they are informed and believe, that the said Gould and Fisk have subsequently alleged and pretended that the several payments hereinbefore mentioned, as having been made out of the funds of the Erie Railway Company in July, 1868, in connection with the settlement of the said suits and litigations, and on the said arrangement with Cornelius Vanderbilt, were not made or concurred in by the said Gould and Fisk, and particularly so in respect of the said payments to Cornelius Vanderbilt, and that under such allegation said Gould and
 96 Fisk or one of them, have caused to be brought in the name of the Erie Railway Company, some suit or pretended suit against said Vanderbilt to recover back the amount so paid to him or some part thereof; but your orators upon their information and belief charge that all such allegations of said Gould and Fisk are unfounded and untrue, and that in truth and fact all such payments were made with the full acquiescence and concurrence and in part at least, with the active intervention of said Gould and Fisk, and particularly that at the time of such payments made as aforesaid in settlement of the suit

and claim of Richard Schell, and of the said several 97
 payments to Cornelius Vanderbilt, the said Jay Gould
 was the treasurer of the said The Erie Railway Company
 and as such had the custody of its funds, and was and is
 legally responsible for the due use and application of
 such funds, or at least responsible for uses made thereof
 with his concurrence or acquiescence, which he at the
 time knew to be illegal, unauthorized or fraudulent;
 and that said Gould, as such Treasurer, participated in
 actively making the said payments to said Vanderbilt,
 and in settlement of said suit and claim of said Schell,
 and as such Treasurer endorsed over and delivered, or
 concurred in delivering to such parties, the checks by 93
 which such payments were made, which were drawn
 against funds in bank belonging to the said Erie Rail-
 way Company, and that he did so, well knowing that
 such payments were unauthorized, illegal and frau-
 dulent, and with full notice and knowledge that said
 Vanderbilt and Schell, respectively, had no such legal
 or valid demands against The Erie Railway Company as
 to legitimate such payments to them, and that in fact
 such payments to said Schell and Vanderbilt, respec-
 tively, were made as part and parcel of the consum-
 mation of the above stated illegal, corrupt and fraudulent
 arrangement to which the said Gould, Fisk and Lane, 99
 and their confederates were parties as aforesaid, and
 whereby they made great gains and profits to them-
 selves.

And your orators, upon their information and belief,
 further show unto your Honors, that in or about the said
 month of July, 1862, Daniel Drew, who had until then
 been treasurer of the said Erie Railway Company,
 resigned that office, and thereupon the said Jay Gould
 was made treasurer in his place; and thereupon, or
 shortly thereafter, the said Jay Gould, as such treasurer,
 received from said former treasurer, cash funds of the
 said company to a very large amount, and as your ora-
 tors are informed and believe, to the amount of more
 than \$5,500,000, nearly all of which was proceeds of

100 the above mentioned \$10,000,000 of convertible bonds or 100,000 shares of new stock issued in February and March, 1868, and that, as your orators are informed and believe, in addition to the large sums thus passing into his hands, and besides the current receipts of the company from its earnings, the said Gould, as such treasurer, received at some time between the time of his succeeding to that office in July, 1868, and the election of Directors in October next following, a large sum, amounting, as your orators are informed and believe, to about the sum of \$1,000,000, from the proceeds of negotiation of sterling bonds, so called, of said company, which remained on hand when said Gould became treasurer.

101 And your orators, upon their information and belief, further show unto your Honors, that from the time of the retirement of said Eldridge from the presidency of said company, and the said substitution of said Gould in his place in July, 1868, until the annual election of Directors in the succeeding October, (as well as subsequent to such election as herein afterwards stated,) the said Gould Fisk and Lane had practically in their own hands the entire control, direction and management of the affairs of the said company and of the funds and property thereof.

102 That in or about the said month of July, 1868, the said James Fisk, Junior, was made Comptroller of the said Erie Railway Company, and taking thereupon to himself the powers formerly exercised by the Auditing Committee of the Board of Directors, he exercised, and has thenceforth hitherto continued to exercise, except in so far as said Gould and Lane may have participated therein, control over the auditing, allowance, and disallowance of bills and claims against the Company; the said Jay Gould united in his own person the offices of President and Treasurer, and having supreme control over the Company's funds, except in so far as the said Fisk and Lane may have participated therein, he made such uses thereof, from time to time, as would best serve the ends and

aims of himself and his confederates, the said Fisk and Lane, and the said Lane, at about the same time, was made, and has thenceforth continued to be, the counsel of said Company, with the addition of large powers to those previously exercised by the counsel of the Board, and to the exclusion of the advice and experience of Mr. A. S. Diven, and Mr. J. O. Bancroft Davis, members of the Board, who were of the legal profession, and who until then were often advised with as to many of the legal questions affecting the Company. 103

That during the said period from July to October, 1868, the Board of Directors of said Company held no meeting whatever, and had no participation in the management and control of the affairs of the said Company, but whatever of such control was not exercised by the said Gould, Fisk and Lane in their said offices of President, Treasurer, Comptroller and Counsel, was exercised by them as the controlling and always co-operating majority of the executive committee, Mr. Thompson and Mr. Davis, the other two members of the executive committee, being by said Gould, Fisk and Lane systematically kept in great measure ignorant of the important doings of said committee, and no full or proper minutes of the proceedings of said executive committee being by them allowed to be kept by Mr. Otis, the Secretary of the Company, who was the proper officer for that purpose; and during said period the said Gould, Fisk and Lane systematically and designedly kept from the knowledge of the other Directors of the Company the more important acts and doings of said executive committee and especially such of their proceedings as were directly in the private and personal interests and in promotion of the private, selfish and fraudulent schemes of the said Gould, Fisk and Lane. 104 105

That in anticipation of the approaching regular annual election of Directors of said Company, to be held in October, 1868, the said Gould, Fisk and Lane contrived a scheme for causing themselves and such other persons only as they should name and choose for the purpose to be elected Directors of the said Company at such next elec-

106 tion, and in order to carry out such scheme they resorted to and put in execution divers illegitimate and fraudulent tricks and devices, amongst which were the following, viz. :

Having made such arrangements as that at a given date, a very large amount of stock should stand on the books in the names of themselves and their confederates and of persons whose proxies for voting they could secure by purchase or otherwise, the said Gould, Fisk and Lane, by an order made or assumed to be made by them, 107 in the mere exercise of their power as a majority of the Executive Committee, without the knowledge of the other members of said Committee, and without any action or knowledge of the Board of Directors, or the knowledge of any member of such Board save themselves, and without any previous public or general notice whatever of an intention so to do, did suddenly close the stock transfer books of said Company on the 19th day of August, being about sixty days prior to the annual election, and at least thirty days earlier than the By-laws of said Company contemplated, or the stockholders anticipated, or than had been the usage of said Company, or 108 than was for any honest or useful purpose necessary; and they pretended to keep such transfer books closed from that time until the election, so as that during such period no stock could properly be transferred into the name of any person so as to enable him to vote thereon, or to prevent the same from being voted on by the person in whose name it may have happened to stand at the time of closing the books; but that, as your orators are informed and believe, transfers were during such period by the said Gould, Fisk and Lane permitted and caused to be secretly made in certain cases where such transfer would increase the voting power of themselves and their confederates, although transfers were not permitted in any other case.

That such acts had been done and such arrangements made by the said Gould, Fisk and Lane and their confederates, that when the transfer books were suddenly

closed in manner aforesaid, there stood on the books of 109
 said Company in the names of themselves and their business firms and of their confederates, the following named amounts of the stock of said Company, viz., in the name of Fisk, Belden & Co., 18,300 shares; in the name of Fisk, Bradford & Co., 25,000 shares; in the name of Smith, Martin & Co., 1,800 shares; in the name of Smith, Gould, Martin & Co., 74,800 shares; and in the name of another firm, the control of whose proxies for voting thereon at said election the said Gould, Fisk and Lane acquired by some private arrangement with them, the particulars whereof are unknown to your orators, 33,740 shares, making in all 153,640 shares of stock, the voting power on which at such election was 110
 controlled by said Gould, Fisk and Lane, being more than one half of all the stock eventually voted on at such election, the whole amount so voted on being 274,784 shares.

And your orators further show upon their information and belief that, although at the time of the closing of said transfer books, there then stood in the names of the respective firms with which said Gould and Fisk, were connected, such stock to the nominal amount of nearly \$12,000,000, the said Gould and Fisk as to much the greater proportion thereof had not, nor had their said firms any substantial or beneficial proprietorship of such stock, but that they had caused the same so to stand in their names at that particular time, by the 111
 same having been originally issued in their names for the purpose of sale and retained in such name notwithstanding sale thereof and delivery made by handing over certificates and powers of attorney, and by the before mentioned process of borrowing or purchasing, and holding for the briefest possible period such stock in order that the same might stand in their names at the closing of the transfer books, notwithstanding such shares might be returned or resold and parted with immediately afterwards and delivered by means of handing over the Stock Certificates with power of attorney to transfer, and that such of said stock as in fact belonged to the

112 said Gould and Fisk, or their said firms or any of them, had in great part been acquired by the use, in some form directly or indirectly, of the money of the Erie Railway Company.

And your orators further show, as they are informed and believe, that said Gould, Fisk and Lane, in order that they might at all events carry out their said scheme of electing a Board of Directors of their own choosing, had likewise caused to be prepared and executed in the name of the Erie Railway Company, a further issue of convertible bonds to the amount of many millions of dollars, and made a pretended issue and delivery thereof, and had likewise caused to be prepared and executed certificates for a great amount of stock into which such
 113 bonds were proposed to be converted, with the design and purpose of voting upon the new stock thus proposed to be created, if the same should be necessary in order to control the then approaching election, and that they forebore actually to create such new stock only for the reason that, without it, they were enabled by their other tricks and devices, to cast votes enough to control the said election. And your orators, as they are informed and believe, further show, that shortly before the holding of the said election, the said Gould, Fisk and Lane, having secured to themselves the power of controlling the election, caused to be prepared and presented for signature to several of the persons whom they proposed to elect as directors, a paper by which such persons
 114 should pledge themselves to support the policy of said Gould, or resign their Directorship, which paper was signed by several such persons, and they were elected as directors under said pledge.

And your orators further show, as they are informed and believe, that the said Gould, Fisk and Lane, or one of them, were enabled to and did vote at such election upon a large number of shares in virtue of proxies for voting which they purchased from parties in whose name the stock stood, and that in many of such instances such parties were not the actual owners of the stock thus standing in their names, but had previously parted with

the same, and made delivery thereof by handing over 115
the certificate with power of attorney to transfer. And
your orators believe and charge that the price which
was paid for the said proxies was derived directly or in-
directly from the funds of the Erie Railway Company.

And your orators further show unto your Honors, that
at the election held in October, 1868, under the circum-
stances above set forth, the said Gould, Fisk and Lane
caused the following named persons to be elected direc-
tors of the Erie Railway Company for the then ensuing
year, that is to say: Jay Gould, James Fisk, Junior,
Frederick A. Lane, William M. Tweed, Peter B.
Sweeney, Daniel S. Miller, Jun., Alexander S. Diven, 116
George M. Diven, Homer Ramsdell, John Hilton,
George M. Groves, John Ganson, Charles G. Sisson, O.
W. Chapman, J. C. Bancroft Davis, Henry Thompson,
and William B. Skidmore. That as your orators are
informed and believe, the said J. C. Bancroft Davis and
William B. Skidmore, when they came fully to under-
stand the purposes of the said Gould, Fisk and Lane, re-
signed their offices as directors. That immediately upon
the said election being made, a meeting of the said
Board of Directors was held at which the only business
transacted was to elect Jay Gould President, Alexander
S. Diven, Vice President, James Fisk, Junior, Comp-
troller, and Jay Gould, James Fisk, Junior, Frederick
A. Lane, William M. Tweed and Daniel S. Miller, Junior,
the Executive Committee, and said persons respectively 117
held such offices until October, 1869. That the said Dan-
iel S. Miller, Junior, is a brother-in-law of said Gould,
and wholly under his influence, and the said William M.
Tweed was and is in entire accord with the said Gould,
Fisk and Lane. That your orators believe the said Alex-
ander S. Diven to be a person of integrity and good
capacity, and of much skill and experience in railroad
management, and he had formerly been an active execu-
tive manager of the Erie Railway Company, but that the
position of Vice President, which was assigned to him
by the said Gould, Fisk and Lane, was a nominal one, and

118 under the circumstances, and especially in view of the
 above mentioned pledge which had been made by the
 Directors, the said Diven was powerless to thwart the
 schemes of the said Gould, Fisk and Lane. And your ora-
 tors, upon their information and belief, further show, that
 from and after the day of the said election in October,
 1868, until the election of a new Board in October, 1869,
 no meeting of the Board of Directors of said Company
 was held, except in a single instance, where a company
 with whom a contract was being made absolutely insis-
 ted, as a condition without which they would not enter
 into it, that such contract should be ratified by the Board
 119 of Directors of the Erie Railway Company, upon which
 occasion a special meeting of the Board was called for
 that single purpose, and no other business was transacted.

And your orators further show, as they are informed
 and believe, that during the entire year from October,
 1868, to October, 1869, the said Gould, Fisk and Lane,
 in virtue of their respective offices of President, Treas-
 urer, Comptroller and Counsel, and as the controlling
 majority of the Executive Committee, had in their own
 hands and exercised the entire, absolute and unchecked
 control, management and direction of the affairs of the
 120 said the Erie Railway Company and its funds and prop-
 erty, and that whatever was done during such period in
 respect of the said company, its funds and property, its
 stock and indebtedness, and all its affairs, was by the
 procurement and direction, and under the complete
 management and control of the said Gould, Fisk and
 Lane, and they are responsible therefor, and for the re-
 sults thereof, as fully as if there had been no Board of
 Directors. That during such period, not only did the
 Board of Directors exercise no control as a Board over
 the management of said company, but the acts and doings
 of the said Gould, Fisk and Lane as Executive Officers,
 and controlling members of the Executive Committee,
 were for the most part kept by them from the knowledge
 of the individual members of the Board of Directors,
 except those of them who were upon the Executive

Committee, and those who were the close allies and confederates of the said Gould, Fisk and Lane in their schemes of private gain and spoliation of the company, and that excepting those persons, the directors of the company knew little or nothing more of what was going on in its affairs than if they had not been directors. 121

And your orators further show unto your Honors, that the substantial results of this one year's absolute and unchecked control of the said company, by the said Gould, Fisk and Lane, are shown by the report made by the said Jay Gould as President, to the stockholders of the Erie Railway Company, bearing date January, 17, 1870, and from the report of the Erie Railway Company, to the State Engineer and Surveyor of the State of New York, made pursuant to the General Railroad Act, for the year ending September 30, 1869, a copy of which report to the said Engineer and Surveyor is annexed to and made part of the first mentioned report, made by Jay Gould, President, to the stockholders, the whole of the same having been printed together in pamphlet form, and issued from the Erie Railway Company's printing office, and from such reports appear the following results, for the year ending September 30, 1869, viz.: 122

During such year, the income account of said company is shown to be as follows: 123

Gross earnings.....	\$16,721,500 34	
Deduct		
Current expenses....	\$13,718,035 43	
Rents of leased roads.	\$24,020 00	
	<hr/>	14,542,105 43
Net earnings.....	\$2,179,394 91	
Being 13 $\frac{03}{100}$ p. c.		
Paid for interest on mortgage debt....	1,703,773 00	
	<hr/>	\$475,612 91

showing an apparent surplus applicable to dividends, of \$475,621 91, which sum, upon the showing of the said

124 managers, ought to have been applied to pay a dividend or interest upon the preferred stock, and would be sufficient for such dividend, at the rate of about five per cent; nevertheless, the said managers of the company's affairs have not paid such dividend or any cash dividend whatever upon the preferred stock, but have withheld the same, and upon the allegation that the surplus earnings of the year over and above mortgage interest have necessarily been applied to expenditures for permanent improvement, they, in or about the month of November last declared a dividend of seven per cent. upon the preferred stock, payable in scrip, by which such amount is promised to be paid at some future period.

125 In respect of the capital account of the said Company the following results appear from the said reports, viz:

During the said one year from September 30, 1868, to September 30, 1869, the capital of the said Company was increased to the extent of \$32,234,700, or 322,347 shares of common capital stock of said Company of the par value of one hundred dollars each.

126 It is stated in the said report for the year ending September 30th, 1869, that at the close of such year the total amount subscribed and paid in of capital stock was \$78,546,910, and that the amount of such capital paid in, as per the last annual report for the year ending September 30, 1868, was \$46,302,210, showing the increase of share capital during the year to be the amount hereinbefore specified in that behalf.

It further appears by the said report made to the State Engineer and Surveyor for the year ending September 30, 1869, that no reduction had been made in the funded debt of said Company during such year, the amount of such funded debt at the close of the year being therein stated to be \$23,398,800, being precisely the like amount as at the close of the year then next preceding.

It is stated in said Report to the State Engineer and Surveyor, that the floating debt of the said Company, according to the report of the year ending September 30, 1868, amounted to \$4,893,735.81; and it is represented by

the said Report, that at the close of the year ending Sep- 127
 tember 30, 1869, there was no floating debt ; but your
 orators believe and charge this latter statement to be un-
 true, and that in fact there was a considerable floating
 debt at the close of such year, though your orators are
 ignorant in respect of its amount.

And if it be true that such alleged floating debt of
 \$4,893,735.81 was extinguished during the said year, your
 orators upon their information and belief allege that the
 said floating debt was in great part illegitimate, and had
 been created by the illegal, unauthorized, and fraudu-
 lent acts of the said Gould, Fisk and Lane, and their
 confederates, and not for any legitimate uses or purposes 128
 of the said, Erie Railway Company ; and moreover,
 that the large amount of cash which the said Jay Gould
 had received from the late treasurer in July, 1868, as
 hereinbefore mentioned, and which had not been appro-
 priated to any legitimate uses of the said Company prior
 to September 30th, 1868, was much more than adequate
 for the payment of the said alleged amount of floating
 debt. And your orators further show that by the said
 report to the State Engineer and Surveyor for the year
 ending September 30th, 1868, the expenditures during
 the said year in permanent improvements of and addi-
 tion to the Railway of said Company, with its appurte-
 nances, and rolling stock and equipment, which expendi-
 tures are in said report stated under the head of "Cost 129
 of Road and Equipment", are shown to amount to the
 following sums and no more, that is to say :—

For Graduation and Masonry.....	\$807,482	36
Superstructure, including Iron.....	1,095,170	59
Passenger and Freight Stations, Buildings and Fixtures.....	31,646	59
Engine and Car Houses, Machine Shops, Machinery and Fixtures.....	203,502	26
Land, Land Damages and Fences.....	15,359	52
Locomotives and Fixtures and Snow Ploughs.....	431,295	20
Passenger and Baggage Cars.....	153,189	98
Freight and other Cars.....	834,053	51
Pavonia and Twenty-third street Ferries..	260,751	95

\$3,832,451 96

130 amounting in the aggregate to \$3,832,451.96; upon comparison of which amount, with the addition of \$32,234,700 made to the share capital by the said Gould, Fisk and Lane during the said year, there appears a deficiency of \$28,402,248.04, unaccounted for by the said Gould, Fisk and Lane; and the only pretence of accounting for any part of such deficiency which appears in the said Report to the State Engineer and Surveyor, excepting the above mentioned item of floating debt alleged to have been extinguished, is found in one item of \$4,813,001.08 appearing in the said Report for the excess of the amount charged against the old New York and Erie Railroad Company, under the head of "cost of road and equipment" at the close of the year ending September 30, 1869, over the amount so charged at the close of the year ending September 30, 1868.

In respect of which charge your orators say, that they do not understand upon what it is based or to what it refers, but according to the best of their knowledge, information and belief, they allege that no such amount was paid out during the said year to or upon account of the old New York and Erie Railroad Company, or upon any obligation by it created, and that it is in no wise a legitimate and proper charge; but that even allowing this item to the said Gould, Fisk and Lane, as an accounting for so much of the additional share capital by them created during the said year, there still remains a deficiency of more than \$23,500,000 by them unaccounted for.

And your orators upon their information and belief further allege, that in so far as any portion of the proceeds of the said additional share capital created during

the year ending September 30th, 1869, not accounted 133
 for by the said report to the State Engineer and Sur-
 veyor, may have been expended upon or for any pro-
 perty belonging to or acquired by or for the Erie Rail-
 way Company, such expenditures were wholly or almost
 wholly illegal, unauthorized and illegitimate, and that
 such expenditures were made by the said Gould, Fisk
 and Lane, or one of them, in virtue of their power as
 executive officers and executive committee as aforesaid,
 without any order or assent of the Board of Directors,
 and mainly if not entirely for purposes foreign to the
 legitimate business of the company, and many of them in
 furtherance of the private and personal ends and objects
 of the said Gould, Fisk and Lane or some or one of them, 134
 and that such expenditures were for the most part im-
 provident and wasteful in the highest degree, and yield-
 ed no substantial return or advantage at all commens-
 urate with the amount expended; and that the sum
 total of all such expenditures made, even professedly
 for the company's account, is but trifling in comparison
 with the beforementioned enormous unaccounted for
 deficiency of proceeds of the said new share capital
 created during the year ending September 30th, 1869:
 but your orators are unable to give any more parti-
 cular statement in respect of the application or expendi-
 ture by the said Gould, Fisk, and Lane of the above
 mentioned deficiency.

And your orators, upon their information and belief, 135
 further show unto your Honors that the before men-
 tioned increase of the share capital of such Company to
 the extent of \$32,000,000 and upwards, in the year
 ending September 30, 1869, as stated in the said
 report to the said State Engineer and Surveyor
 was actually made, and that such additional stock
 to the extent of over 322,000 shares of \$100 each
 was actually issued by the said Gould, Fisk and Lane;
 that under their management and direction, certificates
 for such stock in the usual form of stock certificates of

136 said Company, and bearing the signatures of the proper officers and appearing upon their face to be genuine certificates for valid shares of the stock of said Company have been issued and put in circulation in the usual course of business, and such certificates and the stock purporting to be represented thereby have been from time to time sold and delivered in the New York markets and in Europe and elsewhere, to bona fide purchasers who purchased and paid for the same, believing that they were thereby acquiring valid and bona fide shares of stock of the said Company, and that the said shares of stock have been from time to time sold and resold, and dealt in, as aforesaid, and transferred and re-transferred
 137 on the books of the said Company, and that as your orators are informed and believe, the same have become so mingled with the genuine stock of the said Company existing on and prior to September 30, 1869, that they cannot now be distinguished or separated therefrom.

And your orators, upon information and belief, further state that such new stock of the said Company to the amount of thirty-two millions and upwards, so issued in the year ending September 30, 1869, was created and put in circulation by the said Gould, Fisk and Lane,
 138 without any resolution of the Board of Directors of said Company, purporting to authorize the same, and without any authority therefor in any way derived from the then existing stockholders, and that such creation and issues of new stock, and all the transactions upon which the same were based or pretended to be based, were made and carried on by the said Gould, Fisk and Lane, merely by the exercise of their power as executive officers and Executive Committee, as aforesaid; and that for the most part such issues of new stock were made by the said Gould, Fisk & Lane secretly, and such new stock was put upon the market and sold in small parcels to *bona fide* purchasers, while such purchasers and the community were ignorant, and that such largely increased issues of stock had been or were being made.

And your orators, upon their information and belief, 139
 further show that the only powers or authority, by or
 under which new shares of stock of the Erie Railway
 Company could lawfully be created by said Company at
 any time during the year in which such \$32,000,000
 of new stock was issued are to be found in the
 power of said company to issue shares of its stock in
 exchange for stock of other railroad companies which
 might be consolidated with, or whose roads might be
 leased to, the Erie Railway Company, and the power to
 issue shares upon the conversion into stock of valid con-
 vertible bonds previously issued by said Company, con-
 taining the privilege to the holders to convert such bonds
 into an equal amount of stock at par.

And your orators charge that at all events none other 140
 than a very trifling portion and they believe and charge
 no portion whatever of the said \$32,000,000 stock
 issued in the year ending September 30, 1869, was
 so issued in exchange for the stock of any other railroad
 company under the power or authority first above refer-
 red to ; and that no portion whatever thereof was issued
 upon the conversion of any valid bonds of said Company
 which were outstanding on September 30th, 1868, for
 that no such bonds have been converted into stock ; and
 that therefore the whole of such \$32,000,000 of new stock
 could only have been issued under legal authority or 141
 pretence of legal authority, upon the conversion into such
 stock of convertible bonds issued subsequent to Septem-
 ber 30, 1868.

And your orators, upon their information and belief,
 further show that the said \$32,000,000 and upwards
 of new stock was in fact so issued, in exchange for
 and upon the conversion of convertible bonds of
 the said Erie Railway Company of the like amount
 which had been issued in the same and on behalf of
 said company during the said year, ending September
 30, 1869, by the said Gould, Fisk and Lane, in virtue of

142 the power and control which they exercised as such executive officers and executive committee as aforesaid, and that the whole transaction of issuing and disposing of such convertible bonds to the amount of over \$32,000,000, and receiving the proceeds thereof, was under the sole management, direction and control of said Gould, Fisk and Lane, save in so far as their confederates William M. Tweed and Daniel S. Miller, Jr., may have participated therein, and was devised and carried through by the said Gould, Fisk and Lane, without any resolution of the Board of Directors authorizing the same, and without the knowledge or assent of such Board or of the stockholders, and that

143 said Gould, Fisk and Lane, sold and disposed of the said convertible bonds at such prices and upon such terms as suited their pleasure, and received the proceeds of such sales and dispositions, and wholly controlled the management and application of such proceeds.

And your orators further state that the said convertible bonds were as alleged by the said Gould, Fisk and Lane issued in the name and on behalf of said company, under authority derived from the tenth subdivision of the twenty-eighth section of the the general Railroad law of the State of New York, passed April 2, 1850, and that the only purpose for which such bonds could legally be

144 issued by or on behalf of said Company was "to borrow such sums of money as might be necessary for completing and finishing or operating their Railroad," and your orators upon information and belief allege that such convertible bonds were to a great extent issued, sold and negotiated by the said Gould, Fisk and Lane to some of themselves, and to business firms in which they or some of them were interested as co-partners or otherwise, and particularly to the firms of Smith, Gould, Martin & Co., and Fisk, Belden & Co, and to others the confederates, friends and personal associates of the said Gould, Fisk and Lane, respectively, and that upon the sale and disposal of such bonds to such parties as aforesaid, of to others, great and extravagant discounts from the

face of such bonds and commissions thereon, amount- 145
 ing in some instances to as much as or more than fifty
 per cent. were allowed, or pretended to be allowed, to the
 parties purchasing said bonds, by the said Gould, Fisk,
 and Lane, selling, or pretending to sell the same in the
 name and on the behalf of the Company, but your ora-
 tors charge that such discounts and commissions were
 grossly improvident and wasteful, and the agreement on
 the part of said Gould, Fisk, and Lane, in pretended rep-
 resentation of the Company, to allow such enormous dis-
 counts and commissions, was corrupt and fraudulent;
 that all such pretended allowances of discounts and
 commissions to the purchasers of such bonds, and particu-
 larly where said Gould, Fisk, and Lane, or either of them,
 or any of their confederates, were interested in the pur- 146
 chase were illegal, unauthorized, and in nowise binding
 upon the Erie Railway Company, and that the said
 Gould, Fisk, and Lane, having issued and negotiated
 the said bonds solely under the said authority to borrow
 money for the purposes in that behalf limited by the
 General Railroad Act, and the said bonds, or the stock
 issued on the conversion thereof, having ultimately
 passed into the hands of *bona fide* purchasers, are le-
 gally and equitably accountable and liable to the said
 Company and its *bona fide* shareholders for sums equal
 to the face of such bonds, as for so much money borrowed
 by them in the name and on behalf of said Company.

And upon information and belief, your orators further 147
 show unto your Honors, that from the time when the
 said Gould became President and Treasurer of said
 Company, and the said Gould, Fisk, and Lane be-
 came controlling members of the Executive com-
 mittee in or about July, 1863, continuously up to the
 present time, the said Gould, Fisk and Lane have
 really had the entire direction and control of the finan-
 cial affairs of the Erie Railroad Company, and the cus-
 tody and disposition of all its funds, and that during all
 such time they have managed, controlled and used such
 funds at their own will and pleasure, and have made the
 same in great measure subservient to their own priva

148 gain and advantage, and used such moneys of the company very much as if the same belonged to themselves.

And your orators allege, upon their information and belief, that enormous amounts of such money belonging to the said company have for long periods of time not been kept on deposit in the name of the Erie Railway Company, nor been in any way kept separate as the property of said company, but have been retained in the hands of the said Gould, Fisk and Lane, or some or one of them, or in the hands of business firms, with which they or some of them were connected, and in the hands of other persons their confederates, and have been used by the said Gould, Fisk and Lane for their own private
149 gain, benefit and advantage, and have been by them to a very great extent employed and put at hazard in immense speculations in stocks, gold, and other things, and in other ventures in which the said Gould, Fisk and Lane, or some or one of them from time to time engaged, and that thereby they have made to themselves very great gains and profits.

And your orators, upon their information and belief, further state, that in respect of very great amounts of such money of the said company, the use of which the said Gould, Fisk and Lane respectively have had for their own private purposes, the said Gould, Fisk and
150 Lane have resorted to and used divers methods of indirection, evasion and fraud to cover up and conceal the truth in regard to their real beneficial use of such moneys, and among the devices thus resorted to has been the one of acquiring the substantial control of or otherwise confederating with a bank, and pretending to keep the moneys of the Erie Railway Company on deposit in said bank to its credit, while in fact said Gould, Fisk and Lane, or some of them or of their confederates on their behalf have had the use of such moneys, or a great part thereof, or an amount corresponding thereto, in the shape of loans from or drafts upon such bank, or in some other form, directly or indirectly.

And your orators, upon their information and belief,

allege that the tricks and devices by which the said 151
 Gould, Fisk and Lane have had the use of the moneys
 of the Erie Railway Company for their private specula-
 tions and other purposes of private gain and advantage,
 without the same being apparent upon the company's
 books or accounts, have been numerous, complicated,
 and very cunningly hidden, and your orators are unable
 more particularly to specify the same, but they believe
 and charge that upon thorough judicial investigation
 it will appear that the said Gould, Fisk and Lane, or
 some of them, have directly or indirectly had the use of
 the moneys of the said company to a very great amount,
 and have made to themselves immense gains and profits
 therefrom, and particularly that at a certain time they 152
 engaged in a stock speculation wherein they purchased
 stock of the New York Central Railroad Company to
 the amount of several millions of dollars, from which,
 upon a great and sudden rise in such stock, owing to an
 operation of which they had previous secret intelligence
 unknown to the public, they made many hundreds of
 thousands of dollars of profits, and that the substantial
 capital with which such speculation was carried on was
 derived, directly or indirectly, from the funds of the
 Erie Railway Company ; and that although the capital
 by means of which such stock was carried and held
 until such sudden rise in price took place, may have
 been in part derived from loans obtained from third 153
 parties, upon hypothecation of the stock, according to
 the usages of such speculations, the margin upon such
 loans, or excess of cost of the stock over the amount bor-
 rowed upon it, which was in fact the pecuniary basis of
 the speculation, and the thing put at hazard therein, was
 derived, directly or indirectly, from the funds of the
 Erie Railway Company ; and that the substantial capital
 for and amount put at hazard in other immense specu-
 lations and financial operations of the said Gould, Fisk,
 and Lane, or some of them, in the purchase and sale of
 gold, and in the purchase and sale of other stocks than
 that herein last above mentioned, and in the financial

154 operations known among business men as locking up money, and thereby causing an artificial stringency in the money market, a rise in the rate of interest, and a fall in the price of stocks and bonds, to the profit of money lenders and of speculators for a fall in stocks, in operations of all which kinds the said Gould, Fisk, and Lane, or some of them have, from time to time, engaged to a great extent, and to their great gain and profit, has been in like manner derived, directly or indirectly, from the funds of the Erie Railway Company.

155 And your orators upon their information and belief further show that during the entire period, from the time when said Gould, Fisk and Lane acquired an influence and control in the affairs of the Erie Railway Company, and more especially from the time when they acquired complete control in July, 1863, as aforesaid, continuously up to the present time, the said Gould, Fisk and Lane respectively have, from time to time, and on a great many occasions, and habitually, taken advantage of and abused their trust as directors, officers and managers of said Company, in the making of bargains and transactions in the name and on behalf of the Company on the one side, in which they or some of them were directly or indirectly interested on the other side, and
156 wherein they obtained great benefits, gains and advantages to themselves, to the detriment and loss of the said Company.

That in such bargains and transactions, or some of them, the said Gould, Fisk and Lane, have resorted to divers methods of indirection, evasion and fraud to cover up and conceal their real personal and private interests, adverse to the Company, in the subject matters of such bargains or transactions; in some instances, such adverse private interests of said Gould, Fisk and Lane, respectively, were in the shape of their being stockholders in the Company, thus bargaining or entering into transactions with the Erie Railway Company; in other instances, the bargain or transaction purported to be made with some person or persons other than said Gould, Fisk and

Lane, and without any interest of them or either of them 157
 being apparent upon the face of the transaction, although
 such private interest really existed; in other instances,
 the said Gould, Fisk and Lane, or some of them received
 for their own private uses from the party or parties with
 whom the bargain was made or transaction had with the
 Erie Railway Company, allowances in the shape of com-
 mission, bonus, discount, gratuity, or in some other form,
 by way of compensation for their power and influence
 as managers of the Erie Railway Company, in causing
 the transaction to be entered into on its behalf; in other
 instances, the said Gould, Fisk and Lane, or one of them 158
 were openly and notoriously sellers or lessors of prop-
 erty to the Company, or purchasers of property from the
 Company, or otherwise bargainers and dealers with
 the Company, and in each and every case the
 terms on which the Erie Railway Company was
 made to enter into said transaction of sale, lease,
 or purchase or other bargain or agreement, were
 fixed and determined on the part of the Erie Rail-
 way Company by the said Gould, Fisk and Lane as its
 controlling managers, notwithstanding their personal
 interest adverse to the company, and such terms were
 fixed favorably and beneficially to the personal and
 private interest, direct and indirect, of the said Gould, 159
 Fisk and Lane respectively, and unfavorably and to the
 prejudice of the interests of the Erie Railway Company;
 and among such transactions, your orators specify the
 purchase, on behalf of said company, of a water front
 property on the Jersey shore, known as the Weehawken
 docks property, for which the company was made to pay,
 or agree to pay, the extravagant and excessive price of
 \$1,600,000 or thereabouts, and expenditures on such
 property; the purchase of numerous other parcels of
 real estate in the State of New Jersey, which your
 orators are unable more particularly to specify, and
 expenditures upon such real estate, and the lease
 to said company at an enormous and extravagant
 rent, of the offices which it now occupies, in the

160 building known as the Grand Opera House, situated on the corner of Eighth avenue and Twenty-third street, in the city of New York, of which building the said Gould and Fisk, or one of them, claim to be owners or owner; and in respect to the last mentioned transaction your orators, upon their information and belief, state that the purchase of the entire property known as the Grand Opera House, and the land on which it stands, and of a number of houses and lots adjacent thereto, was made by the said Gould and Fisk, or one of them, for about the sum of \$700,000, of which purchase money the sum of \$300,000, or thereabouts, was paid in money, and the remaining \$400,000 secured by bond and mortgage upon the premises; that
161 thereupon the said Gould, Fisk and Lane, as managers of the Erie Railway Company, took a lease for a long term from the said Gould and Fisk, individually, or one of them, of a portion of said building to be used and occupied for the business offices of the Erie Railway Company, and fixed the rent therefor at an extravagant and excessive amount far beyond the true rental value of the premises so demised, and much greater than could in any case with propriety be paid for business offices suitable for the occupation of said company; and your orators have heard and believe that the rent so fixed was at the rate of \$45,000 per year; and your orators further
162 show, as they are informed and believe, that the sum of \$300,000, which was paid on account of the purchase money of said premises as aforesaid, or the greater portion thereof, was in fact taken by the said Gould and Fisk from the funds of the Erie Railway Company under their control as trustees, and that such use of the funds of the company for their private purposes is by them pretended to be justified by the allegation that such amount was advanced by the company to them on account and in anticipation of the rent to become due from the company under the above-mentioned lease; and that in addition to this subtraction of the company's funds, an enormous additional amount of the money of the said

company has been expended by the said Gould, Fisk 163
and Lane, in furnishing, fitting up and decorating
the offices thus leased, in a style of extravagance and
ostentation which is wholly unsuitable and absolutely
unparalleled.

And your orators further show, as they are informed and
believe, that at the time of the making of this lease the
said company were in the occupation of business offices
at the foot of Duane street, in said city, which is the
starting point of the ferry which connects their road with
the New York side, which offices had been occupied by
them for many years, and were entirely sufficient and
suitable for their legitimate purposes, and that aside
from the enormous waste and extravagance of the ar-
rangements for such new offices at the corner of Eighth 164
avenue and Twenty-third street, such offices are located
in a portion of the city, inconvenient for the legitimate
purposes of their business, and that the location of the
business offices of such a corporation in a building occu-
pied, as is the said so called Grand Opera House, for
theatrical entertainments, under the management and di-
rection of one of the chief officers of the company, viz.,
the said James Fisk, Junior, is altogether unsuitable, dis-
creditable and prejudicial to the interests of the company,
and that the keeping of the books and records of the cor-
poration in a building used as a theatre, is extremely
unsafe and improper.

And your orators charge that the whole transaction 165
and arrangement by which the Erie Railway Company
was thus made to take the lease of the said offices in the
Grand Opera House from said Gould and Fisk, or one of
them, and the advance of the company's money towards
paying the purchase money of said premises, either
under pretence of an advance of rent under the lease,
or otherwise, and the expenditures of the funds of
the company in furnishing, fitting up and decorating
the said offices, were, and are, fraudulent breaches of
trust on the part of said Gould, Fisk and Lane, and
if suffered to remain in effect would involve a sacrifice

- 166 and loss to the said company of nearly the whole amount of its funds thus applied and expended ; and your orators charge that the said company and its *bona fide* shareholders are entitled to be relieved against such transaction, and against all such expenditures of its funds, and to have the said lease cancelled and to recover back from the said Gould and Fisk the whole amount advanced or paid on account of said rent under such lease, and all such portion of the sum paid by said Gould and Fisk on account of the purchase money of said premises, as was directly or indirectly derived from the funds of the Erie Railway Company, and all money of the said company expended in fitting up or decorating the said offices, and that an equitable lien exists in favor of the said
- 167 company, and should be enforced in this suit on behalf of your orators and the other shareholders, upon and against the said Grand Opera House and the land on which it stands, and the said adjacent houses and lots which were embraced in the above mentioned purchase by said Gould and Fisk, or one of them, which premises thus subject to such equitable lien are more particularly described as follows, that is to say : All those certain premises situated in the city of New York, beginning at the north westerly corner of the Eighth Avenue and Twenty-third street, and running thence along the south westerly side of Twenty-third street, ninety-five feet ; running thence north-easterly and parallel with the Eighth avenue, sixty-five feet ; thence south westerly parallel with Twenty third street, one hundred and eighty feet ; thence northeasterly parallel with the Eighth avenue, seventy-four feet nine inches, to a point distant fifty-five feet southwesterly from the southwesterly side of Twenty-fourth street ; thence southeasterly and parallel with said Twenty-fourth street, sixteen feet six inches ; thence northeasterly and parallel with the Eighth avenue, fifty-five feet to the southwesterly side of Twenty-fourth street ; thence along said southwesterly side of Twenty-fourth street, twelve feet six inches ; thence southwesterly and parallel with
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said Eighth avenue, fifty-five feet ; thence southeasterly 169
 and parallel with Twenty-fourth street, forty-two feet ;
 thence northeasterly and parallel with Eighth avenue,
 fifty-five feet, to the southeasterly line of Twenty-fourth
 street ; thence along said Twenty-fourth street, eight feet ;
 thence southwesterly and parallel with the Eighth avenue,
 fifty-five feet ; thence southeasterly and parallel with said
 Twenty-fourth street, forty-two feet ; thence northeast-
 erly and parallel with Eighth avenue, fifty five feet, to
 the southwesterly line of Twenty-fourth street ; thence
 along said Twenty-fourth street, eight feet ; thence south-
 westerly and parallel with the Eighth avenue, fifty five
 feet ; thence southeasterly and parallel with Twenty-fourth
 street, forty-two feet ; thence northeasterly and parallel
 with the Eighth avenue fifty-five feet, to the southeasterly 170
 line of Twenty-fourth street ; thence along said Twenty-
 fourth street, ten feet ; thence southwesterly and parallel
 with the Eighth avenue, fifty-five feet ; thence southeast-
 erly and parallel with Twenty-fourth street, nineteen feet ;
 thence southwesterly and parallel with Eighth avenue,
 twenty-nine feet ; thence southeasterly and parallel with
 Twenty-fourth street, seventy-five feet, to the southwest-
 erly side of Eighth avenue ; thence along said southwest-
 erly side of Eighth avenue, one hundred and thirteen feet
 four inches, to the point or place of beginning, together
 with the buildings thereon erected.

And your orators, upon their information and belief, 171
 further show, that during the period in which the said
 Gould, Fisk and Lane have had the control of the
 Erie Railway Company as aforesaid, they have made
 great gains, profits and advantages to themselves, and
 subjected the said Company to great detriment and loss
 by an extensive system of favoritism and discrimination
 in the rates of freight for transportation over the said
 road of various articles, and more especially the article
 of Petroleum, in those cases where the articles thus
 transported belonged to the said Gould, Fisk and Lane
 or one of them or to firms or companies in which they
 or some of them had pecuniary interests, and in many

172 such instances it has been their custom to make such discrimination in favor of themselves, and concerns in which they had interests, and in favor of their particular friends, associates and confederates, in adjusting the charges for transportation of freight, or by making drawbacks or returns of portions of the freight nominally charged, to an extent, which gave to themselves, the concerns in which they were interested, or their friends, associates or confederates thus favored, so great an advantage over ordinary shippers of the like article as to drive off other shippers from sending their freight by this road, and induce them to resort to other lines of transportation, whereby there has been a large loss to the revenues of the Erie Railway Company, in addition to the direct loss occasioned by the reduction of the freight charges to themselves and their associates and friends below the standard rates charged to the general public. Your orators, cannot more particularly specify these transactions nor the amounts of the gains benefits and advantages thus derived by the said Gould, Fisk and Lane, nor the amount of the damage and loss which they have thus inflicted upon said Company, but your orators, pray a full accounting in respect thereof, and that the said Gould, Fisk and Lane may be adjudged to pay to said Company, for the benefit of your orators and the other *bona fide* shareholders, the full amount of such benefits, gains, and advantages thus obtained directly or indirectly by themselves, or their associates or confederates, and the full amount of all the losses which they have thus caused to the said Company.

174 And your orators, upon their information and belief, further state that the said Gould, Fisk and Lane, upon many different occasions, since they acquired the control of the Erie Railway Company, as aforesaid, have wrongfully applied very large amounts of the funds and property of said Company to the acquisition by purchase or otherwise of large amounts of property, professedly for said Company, which the said Company

had no legal right or authority so to acquire, and to 175
 large expenditures by way of improvement or alleged
 improvement, or otherwise, upon or in connection with
 such property, and to the purchasing, leasing, construct-
 ing, altering or improving, maintaining and operating,
 other railroads which it was not within the legal power,
 capacity or authority of the Erie Railway Company so
 to acquire, possess, maintain or operate, and to pur-
 chasing and dealing in large amounts of the stock and
 bonds of other companies professedly for account of
 the Erie Railway Company, which that Company had
 not legal right, capacity or authority so to purchase or
 deal in, and in making loans or advances, or otherwise 176
 rendering or professing to render aid by or on behalf
 of the Erie Railway Company to other companies, the
 making of which loans or advances or other aid was not
 within the legal right, capacity or authority of the Erie
 Railway Company, and to divers other objects and por-
 poses foreign to those for which the Erie Railway Com-
 pany was created and exists, and which were in no wise
 within the legal capacity or authority of the said com-
 pany, but the particular nature of which your orators are
 unable more particularly to specify. And your orators
 charge that in and by reason of such unauthorized
 applications of the funds of the Erie Railway Com-
 pany to the several purposes above mentioned, or 177
 referred to, very large amounts of the funds of said
 company have been wasted, sunken and lost, and that
 all these unauthorized and disastrous operations have
 been entered into, and the money of said company
 sunk therein by the said Gould, Fisk and Lane, in bad
 faith, and with full knowledge of their illegality, and
 that most of such transactions were entered into by
 them without any resolution of the Board of Directors,
 or the sanction of such Board in any form, unless it
 may be in virtue of the pretended wholesale delega-
 tion by such Board, of all its powers, to the Ex-
 ecutive Committee, which attempted delegation of
 power by said Board your orators charge to be

178 wholly incompetent and without legal effect ; and that such transactions were entirely or almost entirely entered into and carried on by the said Gould, Fisk and Lane, merely in virtue of the power which they practically possessed as Executive Officers, and Executive Committee as aforesaid, without the knowledge or assent of either the stockholders or the directors, with the exception of their confederates in the Executive Committee, and that such transactions when entered upon by them were manifestly improvident and wasteful in a high degree, and many of them were entered into by said Gould, Fisk and Lane, by reason of personal and
 179 private interests which they or some of them had in the subject matters affected thereby, and with a view to furthering their own schemes of personal gain or advantage, and that all such transactions were fraudulent breaches of trust, on the part of the said Gould, Fisk and Lane.

And your orators further show that they are unable more particularly to specify the nature or extent of these several transactions or the amounts of the company's funds, from time to time applied thereto, or the extent of the loss of such funds, by or in consequence of such illegal and unauthorized use thereof ; but they demand an accounting from the said Gould, Fisk and Lane, in all these respects, and pray that the said Gould,
 180 Fisk and Lane, and each of them, may be adjudged in this suit, to pay to said company for the benefit of your orators, and the other *bona fide* shareholders the amount of the company's funds, which, upon such accounting shall be found to have been wasted, sunken or lost, by or in consequence of such illegal and unauthorized transactions, and all losses and damages in any way sustained by the said company in consequence thereof.

And your orators upon their information and belief further state, that during the greater portion of the time since the said Gould, Fisk and Lane acquired the substantial control of the Erie Railway Company, in manner aforesaid, the said Gould,

Fisk and Lane have been, and they still are largely interested in a certain steamboat company, styled the Narragansett Steamship Company, engaged in running a line or lines of steamboats on Long Island Sound, and that the said Gould, Fisk and Lane have substantially had, and still have the practical control of the affairs of the Narragansett Steamship Company, and that the said Gould, Fisk and Lane have to a very large extent used the funds and property of the Erie Railway Company for the benefit, aid and advantage of the Narragansett Steamship Company, as likewise in aid of their own private purchases or acquisitions of stock in said company, and otherwise in furtherance of their own private interests as shareholders therein; and that the said Gould, Fisk and Lane have abused their trust and power as Executive Officers and Executive Committee of the Erie Railway Company, to make and carry out in the name, and professedly on behalf of that company, arrangements with the said Narragansett Steamship Company, relating to the division of through freights upon merchandise transported over the Railway and on the steamboats of said company, and other bargains between the said two companies, the nature whereof your orators are unable more particularly to specify, which arrangements and bargains were and are on the part of the Erie Railway Company, improvident, onerous and greatly prejudicial to its interests, and were and are greatly to the gain, profit and advantage of the Narragansett Steamship Company, and of the said Gould, Fisk and Lane, in respect of their private interests therein.

Your orators are unable more particularly to specify the character or extent of such arrangements or bargains, or the amount of loss or prejudice to the Erie Railway Company, or of wrongful gain or advantage to the Narragansett Steamship Company or the said Gould, Fisk and Lane, in consequence thereof, but they pray a full accounting in respect of the same, and of all dealings of said Gould, Fisk and Lane, in the name of, or

184 professedly on behalf of the said Erie Railway Company, with the Narragansett Steamship Company, or with themselves, in respect of their interest in that Company, and that the said Gould, Fisk and Lane may be adjudged in this suit to pay to the Erie Railway Company, for the benefit of your orators and the other *bona fide* shareholders, the full amount of all loss or damage to the said Company, by or in consequence of the subject matters of such accounting.

And your orators further show upon their information and belief, that the said Gould, Fisk and Lane since they have had the control and management of said Company as aforesaid, have been accustomed to make large gains, profits and advantages to themselves
 185 respectively, directly or indirectly, in or about, or in connection with the furnishing of supplies to the said Company in the shape of discounts, brokerages, bonuses and in other forms, and likewise, that the said Gould, Fisk and Lane have been and are largely interested in certain coal lands and coal mines, and in transportation lines connecting with such coal mines, and that said Gould, Fisk and Lane have abused their trust and powers as Executive Officers and Executive Committee, as aforesaid, by supplying to the Erie Railway Company for its uses coal derived from the mines wherein they were so interested, at excessive prices fixed by themselves, and have thereby made to themselves great gains
 186 and profits, and subjected the said company to great prejudice and loss, and that in order to make room for such supplies of coal, wherein they were themselves interested, they have abandoned or forborne to make use of other sources of supply of coal, previously and still within the control of the said company, by means of which the coal which the company required for its uses could and should have been supplied to it at a cost much less than it was made to pay for the said coal supplies wherein the said Gould, Fisk and Lane, or some of them were interested; but in respect of all those several matters, your orators are unable to give

any more particular statements concerning the same, 187
 and they demand from the said Gould, Fisk and Lane,
 an accounting in respect thereof, and pray that they may
 be in this suit adjudged to pay to the said company for
 the benefit of your orators and the other *bona fide*
 shareholders, the amount of all profits, gains and
 advantages, directly or indirectly, derived by them from
 any of such sources, and the amount of all losses which
 they have inflicted upon the company by such transac-
 tions.

And your orators further show, that on the 20th day
 of May, 1869, the Legislature of the State of New York
 passed an Act, being Chapter 916 of the Laws of 1869,
 which Act is in the words following, that is to say:

“An Act to amend Chapter two hundred and seventy- 188
 eight of the Laws of eighteen hundred and sixty-eight,
 entitled, “An Act in relation to the Erie, New York
 Central, Hudson River, and Harlem Railway Compa-
 nies.”

Passed, May 20, 1869.

The People of the State of New York, represented in
 Senate and Assembly, do enact as follows:

Section 1. Section three of the Act entitled “An Act
 in relation to the Erie, New York Central, Hudson
 River, and Harlem Railway Companies,” passed April 189
 twenty-first, eighteen hundred and sixty-eight, is hereby
 amended so as to read as follows:

§ 3. No stockholder, director or officer of either the
 New York Central Railroad Company, the Hudson
 River Railroad Company, or the Harlem Railroad Com-
 pany shall be a director or officer of the Erie Railway
 Company, and no stockholder, director or officer of the
 latter Company shall be a director or officer of either of
 the three first named companies. The board of directors
 in each of the said companies may so classify the mem-
 bers of such board, by lot or otherwise, that, as nearly
 as may be, one fifth of their number shall go out of office

190 at each annual election; and at the next election of directors in each of the said companies, directors shall be voted for only in place of those whose terms shall then expire under the classification aforesaid.

§ 2. This act shall take effect immediately."

191 And your orators, upon their information and belief, further show that said Act was procured to be passed by the said Gould, Fisk and Lane with the aid and co-operation of said Tweed, who was a member of the Legislature, they pretending therein to represent the Erie Railway Company, and that the provision thereof pur-
 191 porting to authorize such a classification of the Board of Directors as to extend their terms of office to periods of from one to five years instead of an uniform term of one year, was obtained by the said Gould, Fisk and Lane, for the sole purpose of enabling themselves to perpetuate for a long term their power and control of said Company for their own private gain and advantage despite the will of the Stockholders, and that the passage of said Act was not applied for by either the New York Central Railroad Company, The Hudson River Railroad Company or The Harlem Railroad Company, and that neither of those three railroad companies has taken any action under the said Act.

192 And your orators, upon their information and belief, further show that the said Gould, Fisk and Lane did illegally and fraudulently expend a very large amount of the funds of the Erie Railway Company in order to influence and obtain the passage of the said Act, and your orators believe and charge that the passage of said Act was obtained by means of the corrupt expenditure of large sums of money of the Erie Railway Company in influencing directly and indirectly the action of members of the Legislature in favor of said Bill, and that, beside the direct expenditure of money for such corrupt purposes, large amounts of the money of the Erie Railway Company were by the said Gould, Fisk and Lane used and applied by way of compensation to agents by

them employed to promote the passage of such law, all 193
 which expenditures were fraudulent breaches of trust
 on their part. Your orators cannot give any more particular
 specification of such expenditures made directly
 or indirectly from the funds of the Erie Railway Company
 in order to obtain or promote the passage of said
 Act, nor can they state the aggregate amount thus
 expended, but they demand an accounting from the
 said Gould, Fisk and Lane for all moneys which were
 appropriated or applied for any of such purposes and they
 pray that the said Gould, Fisk and Lane may in this suit
 be adjudged to repay to the Erie Railway Company for
 the benefit of your orators and the other shareholders
 the whole amount of such money with interest.

And upon their information and belief your orators
 further show, that since the time when the said 194
 Gould, Fisk and Lane, acquired the control of the Erie
 Railway Company as aforesaid, but when in particular
 your orators cannot specify, the said Gould, Fisk and
 Lane, or some of them have wrongfully and fraudu-
 lently put in circulation and received the money for a
 large amount of the bonds of the before mentioned
 corporation styled the Long Dock Company, of which
 company the Erie Railway Company is substantially
 proprietor as aforesaid, which bonds of the Long Dock
 Company had long previously been taken up, and ex-
 tinguished by exchange therefor of stock of the Erie
 Railway Company, and the reissue of which bonds was
 wholly illegitimate, and that the amount of such bonds
 so fraudulently reissued was half a million of dollars or 195
 thereabout, as your orators are informed and believe.

And upon information and belief your orators further
 show that at the annual election in October, 1869, held for
 the election of Directors of the Erie Railway Company
 for the ensuing year, the said Gould, Fisk and Lane were
 enabled to and did control the said election by devices and
 other means substantially similar to those which they had
 successfully employed for the like purpose at the election
 in October, 1868; and they were further aided in wielding

196 such voting power at the election in October, 1869, by the fact that during the year then last preceding, an enormous amount of the new stock of said Company, which was created during that period, had been issued to or put in the names of the said Gould, Fisk and Lane or some of them or their confederates and in the name of the said firm of Smith, Gould, Martin & Company, and in the names of other persons or firms acting for account of or in concert with said Gould, Fisk and Lane, or some of them or their business firms, and whose proxies for voting on such stock, so long as it stood in the names of such parties, were subject to the control of said Gould, Fisk and Lane, or one of them, and which shares of stock, to a very large amount, although
 197 at the time of the closing of the transfer books, preparatory to such election, the same respectively stood in the names of said Gould, Fisk and Lane, or some of them or their confederates, and in the names of Smith, Gould, Martin & Company, and of such persons or firms acting on account of or in concert with said Gould, Fisk and Lane, or some of them or their business firms, was in fact no longer held in anyway by the persons in whose name the same stood, but had been previously sold and deliveries thereof made to the purchasers by handing over the certificates, with blank powers of attorney, to transfer, according to usage common in such cases,
 198 and which stock certificates having such blank power of attorney thereon endorsed, were thereafter sold, delivered and passed from hand to hand as the representative of the stock, without making any transfers upon the books of the Company.

And your orators particularly allege, upon their information and belief, that a very large amount of stock thus situated was, at the time of said election in 1869, held and owned in England and on the Continent of Europe, where it is the custom to deal in American stocks of this character to a very large extent, by mere delivery of the stock certificate, with such blank power of attorney, executed by the person in whose name the

stock was originally registered, the same passing from 199
 hand to hand in like manner with coupon bonds, and
 that the said Gould, Fisk and Lane were enabled to
 and did, at the election in October, 1869, vote upon and
 assume to represent this stock to an enormous amount
 without any authority whatever from its real owners,
 and without their knowledge and assent, by taking ad-
 vantage of the circumstance of its having been origin-
 ally registered in the names of said Gould, Fisk and
 Lane or some of them, or Smith, Gould, Martin &
 Company, and the other persons acting in concert with
 said Gould, Fisk and Lane, or whose proxies were sub-
 ject to their control as aforesaid.

And your orators further show that it is alleged by the
 said Gould, Fisk and Lane, that at the annual election 200
 in October, 1869, 355,000 votes were cast in favor of the
 Board of Directors, who were then chosen as hereinafter
 mentioned, and that there was substantially a similar vote
 at the said annual meeting in favor of accepting the pro-
 visions of the said Act of May 20th, 1869, providing for
 a classification of the Board of Directors.

But upon information and belief, your orators allege
 that the pretence on the part of said Gould, Fisk and
 Lane, of there having been any such amount of votes in
 favor of the election of such Board, or of the accept-
 ance of such Act, really cast by the actual holders of
 the stock thus voted on, or by any person or persons
 thereunto authorized by such holders is a mere fraud 201
 and fiction ; that in fact, the votes, which were cast in
 favor of the election of such Board, and of the acceptance
 of such Act, were almost all cast by the said Gould, Fisk
 and Lane, or one of them, or by a person or persons
 acting under their direct control or dictation, and
 that the voting power which they exercised upon
 such shares was almost wholly derived by them from
 devices of such character as are hereinbefore set forth,
 viz: Voting upon stock which had been sold and
 delivered by handing over certificate and power as
 hereinbefore mentioned, in the names of the parties

202 originally registered as shareholders, notwithstanding
 they had long before parted with and delivered such
 stock; voting upon stock which had been borrowed or
 otherwise acquired for a very brief period, so as that
 the same might stand in the names of said Gould, Fisk
 and Lane, or their associates and confederates on the
 day of closing the transfer books, although returned or
 parted with almost immediately afterwards, under the
 plan or system hereinbefore set forth; and voting upon
 proxies which had been obtained by purchase from parties
 who either owned the stock, or as was usually the
 case, had it standing in their names without really own-
 ing it. And your orators believe that the purchase
 203 money paid for such proxies was derived directly or
 indirectly from the funds of the Erie Railway Company,
 and that the moneys, by the use of which such shares
 had been caused to stand in the names of said Gould,
 Fisk and Lane, or their associates or confederates,
 at the time of closing the transfer book as afore-
 said, had likewise been derived, directly or inde-
 rectly from the funds of the Erie Railway Company, and
 your orators believe that as to another large portion
 of the shares alleged to have been thus voted on, such
 shares had not been actually and legally issued when
 thus voted on, or the price or value thereof had not been
 paid to the Company, and that if the same existed at
 204 all, they belonged to the Company itself. And your
 orators believe and charge the truth to be, and that it
 will so appear upon judicial investigation, that the pre-
 tended voting at such election did not emanate from the
 actual proprietors of such shares, to any considerable
 extent, and that the said Gould Fisk and Lane, by mere
 fraudulent tricks and devices, were enabled to and did
 control the said election, and thereat elect the Board
 of Directors selected purely by themselves and of
 their own will, without either themselves owning
 or being the actual *bona fide* representatives of any
 substantial proprietary interest in the stock of
 said company to any considerable amount, and that the

omission of the *bona fide* stockholders to oppose 205
 any substantial opposition to the management of such
 election by the said Gould, Fisk and Lane was mainly
 owing to the fact that a great proportion of the stock
 had come to be held by European stockholders who
 had no notice and were not apprised of what was going
 on or intended to be done, or of the necessity for action
 on their part to defeat the fraudulent schemes of said
 Gould, Fisk and Lane, and to a feeling on the part
 of American stockholders of the apparent hopelessness
 of any action on their part against said Gould,
 Fisk and Lane by reason of the enormous voting
 power which they had accumulated in themselves
 by trick and device, as aforesaid.

And your orators show, that at the election held in 206
 October, 1869, under the circumstances aforesaid the
 said Gould, Fisk and Lane caused the following named
 persons to be elected directors of said company, for the
 ensuing year, viz.: Jay Gould, James Fisk, Junior,
 William M. Tweed, Frederick A. Lane, Alexander S.
 Diven, Justin D. White, John Ganson, O. W. Chapman,
 Horatio N. Otis, Charles G. Sisson, Abram Gould,
 Homer Ramsdell, Henry Thompson, John Hilton, Henry
 N. Smith, M. R. Simons and George C. Hall, and that
 almost immediately after such election, and as your
 orators are informed and believe, upon the same 207
 day on which it was held, a meeting of the said board
 was held, and thereat there was made a pretended clas-
 sification of the said directors, in pretended pursuance
 of the said Act of May 21st, 1869, by which classifica-
 tion it was arranged that the terms of office of said di-
 rectors should be as follows:

1st.—Directors whose term shall expire in October,
 1870: Homer Ramsdell, Charles G. Sisson and Justin
 D. White.

2d.—Directors whose term shall expire in October,
 1871: John Hilton, M. R. Simons and George C. Hall.

208 3d.—Directors whose term shall expire in October, 1872: John Ganson, O. W. Chapman and Henry Thompson.

4th.—Directors whose term shall expire in October, 1873: Alexander S. Diven, Henry N. Smith, Abram Gould and Horatio N. Otis.

5th.—Directors whose term shall expire in October, 1874: Jay Gould, James Fisk, Jr., William M. Tweed and Frederick A Lane.

209 And your orators, upon their information and belief, allege that this classification was prepared beforehand by the said Gould, Fisk and Lane; that the Board, in making the same, acted purely upon their dictation, and that at the meeting at which it was made several of the Directors, including the said John Ganson, Alexander S. Diven, and O. W. Chapman, besides others, were absent, and that the postponement of such classification until after an election of Directors should be held subsequent to the passing of the Act, was a mere trick and device of the said Gould, Fisk and Lane, in order to present the false appearance of an approval by the stockholders of the plan of classification, and to afford
20 room for the allegation on the part of said Gould, Fisk and Lane, that the Directors to whom long terms were assigned in the classification, had been elected by the stockholders in view of such probable prolongation of their terms, and not merely for a single year, and the said Gould, Fisk and Lane in such postponement also had reference to the consideration that thereby they could secure to themselves one year's additional length of term, and your orators charge that the said Gould, Fisk and Lane did not decide to postpone such classification of Directors under the Act of May, 1869, until after the next annual election should be held, until they had ascertained that they had complete

control of such election and would have complete 211
 control of the Board of Directors to be elected thereat,
 and that the pretence of there having been any substan-
 tial voice of the stockholders other than said Gould,
 Fisk and Lane and their associates and confederates, in
 favor of such measure of classification, or of the election
 of the Board thus pretended to be classified is a mere
 sham.

And your orators, as they are advised, charge that
 the said pretended classification is without legal
 authority from the provisions of the said Act, and is of
 no legal force or effect whatever, because by the true
 construction of said Act the power of classification was
 given only to the Board of Directors holding office at the
 time of the passage of said act, and it is thereby required 212
 that the classification thereunder, if made at all, shall be
 so made as that a portion only of the Directors shall go
 out of office at the annual election held next after the
 passage of said act.

But your orators allege that the said Gould, Fisk and
 Lane claim such classification to be valid and effectual,
 and that they intend to support and maintain the same,
 and that they, having with their confederates practically
 the entire control of the said Company, as well in respect
 of holding its elections as of its other affairs, intend at
 the next annual election to be held in October of the
 present year, not to permit a voting for a full Board of
 Directors, but only for three Directors in place of those 213
 whose terms then expire under the pretended classifica-
 tion aforesaid.

And your orators, on behalf of themselves and the
 other *bona fide* shareholders pray that there may be an
 adjudication had in this suit, of the invalidity of the
 pretended classification aforesaid, and that by the order
 of the Court the said Company or those controlling its
 action in that behalf, may be directed and enjoined to
 hold an election for a full Board of seventeen Directors
 at the stated time for holding the regular annual elec-

214 tion in October of the present year, as if such pretended classification had never been made.

And upon their information and belief your orators allege that the Board of Directors elected by the procurement of the said Gould, Fisk and Lane in October, 1869, is so constituted, and was designedly so made up by them, as that said board possesses no independent force for controlling the said Gould, Fisk and Lane, but as a board, in so far as it acts at all, is the mere instrument of their will, and that as matter of fact the said board, in so far as it has acted at all, has acted, and does act in entire subserviency to the personal, selfish and
215 fraudulent schemes of the said Gould, Fisk and Lane, and that although it may be true as now alleged by said Gould, Fisk and Lane, that since the election of such new board, meetings of the directors have been held more frequently than during the preceding year, when even the pretence of holding directors' meetings was abandoned, yet that as well since the election of such new board in October, 1869, as before, the said Gould, Fisk and Lane have had and still have practically the absolute and unchecked control of the said corporation, its funds and property, and all its affairs.

216 And your orators upon their information and belief allege, that the said William M. Tweed is in full accord with the said Gould, Fisk and Lane, in their schemes and acts for private and personal gain and advantage at the expense of the Erie Railway Company, and to the utter disregard and sacrifice of its interests, and, as your orators believe has been and is personally interested in many of such schemes and acts; that the said Henry N. Smith was a copartner of said Gould in the firm of Smith, Gould, Martin & Company; that several of the said directors are salaried employees of the Erie Railway Company, holding their offices at the pleasure of the said Gould, Fisk and Lane, or of the said Gould alone, and are under the influence and control of said Gould, Fisk and Lane, and have only a

nominal and trifling interest as shareholders of the Erie 217
 Railway Company if they have any such interest, and
 that among the persons thus situated, as your orators
 are informed and believe, are Justin D. White, the As-
 sistant Treasurer, John Hilton, the father of the Trans-
 fer Clerk, and himself a clerk or agent in some
 other capacity, Horatio N. Otis, the Secretary, and
 George C. Hall, the Supply Agent of the Erie Rail-
 way Company, and that M. R. Simons, another of
 the said Directors, is in substantially like position
 or relation with the said Gould, Fisk and Lane,
 except that he is a salaried employee of the Narragan-
 sett Steamship Company, which is under the manage-
 ment, direction and control of the said Gould, Fisk and 218
 Lane, as aforesaid.

And your orators believe and charge that as to some
 other members of the said Board such as the said
 Homer Ramsdell, Alexander S. Diven, John Ganson,
 and some others who are gentlemen of character
 and of such position and capacity as to make them
 intrinsically proper Directors for such Company, under
 ordinary circumstances, their independent action as
 such Directors is, as your orators believe and charge,
 compromised by reason of their being under some
 pledge that they would either support the policy of said
 Gould or resign, and if it be not so, they are in too small
 a minority to interpose any substantial check to the plans 219
 and operations of said Gould, Fisk and Lane, supported
 as they are by an overwhelming majority of the Board
 in their interest, and that they are in such relations,
 personal or otherwise with the said Gould, Fisk and
 Lane, as have prevented and will prevent them from in
 any way causing to be exerted the corporate power of
 the Erie Railway Company to bring the said Gould,
 Fisk and Lane to account for their past misdeeds, and
 to compel restitution from them of the enormous
 amounts of money which they have wrongfully and
 fraudulently obtained from the funds of the said Com-
 pany and that some of the said Directors not being

220 residents of the City of New York, where the meetings of the board are held, do not attend such meetings.

And your orators upon their information and belief show that since the election of the said new Board of Directors, in October, 1869, there has been by the procurement and under the management and direction of the said Gould, Fisk and Lane a further increase of the common capital stock of the said The Erie Railway Company, to the extent of \$5,000,000, or 50,000 shares of \$100 each, making the whole share capital of such company over \$80,000,000, and that as your orators believe and charge, this has been accomplished by means of the issue by said Gould, Fisk and Lane in the name and on
221 behalf of said Company of its bonds for \$5,000,000, containing a clause authorizing the holder of such bonds to convert the same into capital stock of said Company, which conversion has been subsequently made.

And your orators believe and charge that the like allegations are substantially applicable to this increase of stock and to the issue, negotiation and sale of the convertible bonds which were converted into such stock and the receipt of the proceeds thereof by said Gould, Fisk and Lane, and the application of such proceeds by them, as are hereinbefore contained in respect of the convertible bonds and stock, to the
222 amount of \$32,000,000, or thereabouts, issued during the year ending September 30, 1869, with this exception only, that there may have been obtained by the said Gould, Fisk and Lane some nominal approval by the Board of Directors, who were in fact the mere instruments of their will as aforesaid, of some of their acts and doings in respect of the \$5,000,000 of bonds and stock issued subsequently to the election in October, 1869. And your orators pray that all the allegations of this Bill in relation to the before mentioned \$32,000,000 of stock and bonds and the issue, sale and negotiation thereof, and the receipt of such proceeds by said Gould, Fisk and Lane, or some of them,

or by or under their direction and control, and the application of such proceeds and all the allegations, claims and charges hereinbefore contained in relation to the liability or accountability of the said Gould, Fisk and Lane for or in respect of the said \$32,000,000 of stock and bonds, and the proceeds of the same may be regarded as repeated and made applicable to the said last mentioned \$5,000,000 of stock and bonds, and the negotiation, sale, and issue thereof, and the receipt of the proceeds and the liability or accountability of the said Gould, Fisk and Lane for or in respect of the same with like effect as if the same were here repeated at large in reference to or in connection with said five millions of stock and bonds and the proceeds thereof. 223

And your orators have reason to believe and do believe that the said Gould, Fisk and Lane, unless they be therefrom restrained by the injunction of this Court will, in the exercise of the power by them wielded as above set forth, cause to be issued in the name and on behalf of the Erie Railway Company, further large amounts of convertible bonds of said Company, and further large amounts of stock of said Company in exchange for and upon conversion or pretended conversion of such bonds, and that such stock will be put upon the market and sold to bona fide purchasers, and that said Gould, Fisk and Lane will be guilty of the like mismanagement, improvidence and waste, and likewise of the like frauds, in respect to such further issues of bonds and stock and the proceeds thereof as they have committed, or are chargeable with, in relation to the convertible bonds and stock already issued since the said Gould became President of said Company. 224 225

And your orators say that the credit and character of the said Company have now become so greatly impaired by reason of the mismanagement, waste and fraud of the said Gould, Fisk and Lane, as that no further issues of its unsecured bonds or of its stock could now be made as your orators believe except upon most ruinous terms of discount, and that as your orators, believe not so much as one third of thenom-

226 inal amount of any such further issues of bonds or stock could or can be obtained for the same in the market.

And your orator further show that within the few months last past a large number of the shareholders of the said Erie Railway Company, resident in Great Britain, have become awakened to the necessity of action on their part, in concert with other bona fide shareholders, in order to wrest the control of the said Company from the said Gould, Fisk and Lane, and save it from utter bankruptcy; and it has been ascertained that over four hundred and fifty thousand shares of the stock of said Company, representing a capital of more than 227 \$45,000,000 is held in Great Britain. And your orators say that besides this stock there is a very large amount of the share capital of said Company, held upon the continent of Europe, and the fact of intended adverse action against said Gould, Fisk and Lane on the part of the British shareholders has become known to them, and the same is public and notorious.

And your orators further state that in the course of the proceedings of said British shareholders the fact has appeared that upwards of 190,000 shares of the said stock were held and owned by parties in Great Britain, whose evidence of title was merely the stock certificate, with blank power of attorney for transfer endorsed thereon, the said stock standing registered on the Company's books, in the names 228 of holders who had parted with it, and a large portion of such stock was found to stand in the names of Smith, Gould, Martin and Company, and of other persons and firms, whose proxies for voting could be controlled or obtained by them, through purchase or otherwise, and that the holders of a large amount of the stock thus owned in Great Britain, decided to have their stock transferred upon the Company's books to Robert Amadeus Heath and Henry Louis Raphael, of London, and accordingly the original certificates for a part of such stock, with the powers of attorney for the transfer thereof indorsed thereon, signed in due form

by the parties in whose names the said stock stood 229
 registered, and so filled up as to authorize the transfer
 of the stock represented by the certificates respectively
 to Robert A. Heath and Henry L. Raphael, were for-
 forwarded to Messrs. L. Von Hoffmann & Co., bankers, of
 the City of New York, in order that they might
 procure the transfer of such stock to be made
 accordingly.

And your orators upon their information and belief,
 further show, that on the seventh day of February,
 1870, the said L. Von Hoffmann & Company, as agents
 of the said Robert A. Heath and Henry L. Raphael,
 duly and regularly presented to the Erie Railway Com- 230
 pany, at its transfer office, certificates to the aggregate
 amount of 16,770 shares of the stock of said company,
 which certificates are in due and usual form, and bear
 the signatures of the proper officers and are in all
 respects legal and valid, and which had endorsed thereon
 powers of attorney in the usual and proper form, and
 duly executed by the original shareholders named as
 such in the certificates respectively, authorizing the
 transfer to said Robert A. Heath and Henry L. Raphael,
 of the stock represented by such certificates, where-
 upon the said L. Von Hoffmann and Company, on behalf
 of said Heath and Raphael demanded the transfer to 231
 said Heath and Raphael on the company's books of
 the stock represented by such certificates, proposing to
 surrender the original stock certificates upon such
 transfer, but they were not permitted to make such
 transfer, and the same was wholly refused by and on
 behalf of the said company, although the transfer books
 were then open and transfers were being made by other
 persons. That, thereupon the said L. Von Hoffmann &
 Company addressed a letter upon the subject to the
 said Jay Gould, as President of the said company, of
 which the following is a copy :

232 JAY GOULD, Esq.,

President Erie Railway Company,

Present:

New York, February 7, 1870.

Dear Sir:—We presented, this morning, at the Transfer office of the Erie Railway Company, 16,770 shares which, though they were properly endorsed and stamped, the Transfer Clerk refused to transfer, as desired by us, on the books of the Company. The Transfer Books were open; other parties transferred a number of certificates.
233 We therefore beg to inquire whether this strange proceeding is sanctioned by you, and why we were not allowed to transfer these shares?

Your obd't. servants,

L. VON HOFFMANN & Co.

In reply to which the said L. Von Hoffmann & Co. received from said Gould a letter of the same date, of which the following is a copy.

New York, February 7, 1870.

L. M. VON HOFFMANN & Co.,

Dear Sir:—I am in receipt of your esteemed note of
234 7th inst.

In reply I would say that at present the transfer books of the Company are closed for the purpose of having the back accumulation of work written up, and when they reopen they will be kept at the General Offices of the Company.

Very respectfully,

JAY GOULD,

Pres't.

That on the 16th day of February the said L. Von Hoffmann & Co., being anxious to procure the transfer to their principals, in accordance with their instructions, of the said large amount of stock, and believing that there was no legitimate cause for the delay of such transfer.

addressed a letter to the transfer agent of said company, 235
of which the following is a copy .

New York, February 16, 1870.

To JOHN HILTON, Esq.,

Transfer Agent,

Erie Railroad Office :

Dear Sir:—We beg to inquire whether the Transfer
Books of your Company have been opened again ; and,
if not, whether a day has been fixed when they will be
opened ? If convenient, we should like to see you at our
office, in relation to some certificates to be registered at
the Farmers' Loan and Trust Company.

Please excuse the trouble.

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Yours, respectfully,

L. VON HOFFMANN & Co.

In reply to which, said L. Von Hoffmann & Co. re-
ceived a letter, of which the following is a copy :

SECRETARY'S OFFICE, ERIE RAILWAY COMPANY,

Cor. 8th Ave. and West 23d Street.

Box 839 P. O.

New York, Feb. 17th, 1870.

Messrs. L. VON HOFFMANN & Co.,

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Gentlemen:—Your favor of yesterday, addressed to
John A. Hilton, asking certain information in regard to
the opening of the transfer books, came to hand, and in
the absence of Mr. Hilton, has been handed to the counsel
of the Company for his attention and reply.

Yours respectfully,

W. J. HILTON.

That on the 24th day of February the said L. Von
Hoffmann & Co., having received no communication from
the counsel of said company, addressed to the said Jay
Gould a letter, in the words following, viz. :

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New York, February 24th, 1870.

JAY GOULD, Esq.,

President of the Erie R. W. Co.,

Present :

Dear Sir :—As the representatives of Messrs. Robert A. Heath and Henry Lewis Raphael, of London, on whose behalf we applied to your company on the 7th inst., for the transfer to them of 16,770 shares of its stock, in conformity with regular documents presented for the purpose, and which transfer we have thus far been unable to obtain, we must again apply to you on the subject.

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Some days after the receipt of your note of the 7th inst., we applied to Mr. Hilton, your transfer agent, inquiring when the transfer books would again be opened, in response to which we received, on the 17th inst., a note, stating that our note had been handed to the counsel of the company for his attention and reply, but we have received no communication since from the counsel or any one else on behalf of the company.

We trust we may receive from you, as the head of the company, information as to when we can obtain these transfers, to which our principals are clearly entitled, and that there may be no further delay in regard to it.

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As the by-laws of your company have not been published, so far as we can ascertain, we beg also to inquire whether you will furnish to us a copy of them, or allow a copy to be made at our expense, or if that be deemed objectionable, allow us to inspect a copy. We should also be pleased to be informed whether the original articles of association, under which your company was organized, have been altered, and if so, in what particulars.

Your obd't servants,

L. VON HOFFMANN & Co.

That to this letter the said Jay Gould, as your orators are informed and believe, has returned no answer whatever.

And your orators further show, as they are informed 241
 and believe, that the said L. Von Hoffmann & Co., as
 agents of the said Heath and Raphael, have thus far
 been wholly unable to obtain a transfer of the said
 16,770 shares, or any part thereof, nor has any reason
 been given to them for not permitting such transfer, ex-
 cept a giving out, on the part of said company, that the
 transfer books are closed, and that an injunction against
 permitting of transfers has been granted at the suit of
 some shareholder, by the Hon. George G. Barnard, one
 of the Justices of the Supreme Court of the State of
 New York. And your orators, upon their information
 and belief, charge that whatever may be given out as
 the ground or reason for such closing of the transfer 242
 books, the true motive thereof is the desire and deter-
 mination on the part of the said Gould, Fisk, and Lane
 to prevent foreign shareholders from causing their stock
 to be transferred into their own names, or the names of
 their nominees, and to keep an enormous amount of the
 stock of said company, including not only the above-
 mentioned 190,000 shares and upwards held in Great
 Britain, but likewise a very great amount of stock simi-
 larly situated, which is held upon the Continent,
 in the names of the former holders, who are in great
 measure confederates, friends, and associates of said
 Gould, Fisk, and Lane, or persons whose proxies they
 can obtain by purchase or otherwise when needed, and 243
 that such course of preventing transfers has been
 adopted, and is persisted in, by the said Gould, Fisk, and
 Lane, with the design and purpose of thereby embarras-
 sing and frustrating, as far as may be, the efforts of
 the foreign stockholders to bring the said Gould, Fisk,
 and Lane to justice, for the wrongs and frauds which
 they have committed.

And your orators, upon their information and belief,
 further charge that the pretended suit in the Supreme
 Court of New York on behalf of a stockholder in said
 Company against said Company, wherein such pretended
 injunction against transfers was obtained, is a fraudulent

244 and collusive suit in the interest of said Gould, Fisk and Lane, and that the same was instigated and set on foot by them, and is promoted and carried on, in so far as after the obtaining of said injunction it is carried on at all, by the said Gould, Fisk and Lane, and subject to their direction and control directly or indirectly: and in respect of the request on the part of the said L. Von Hoffmann & Co., in their letter of Feb. 24, 1870, for inspection of, or information concerning the existing by-laws and articles of association of said Company, and where-
 245 your orators say that such inquiries were made because of the existence of rumors to the effect that said Gould, Fisk and Lane, since they have had control of said Company have caused to be made some important alterations in the by-laws or articles of association, or both, which affect the rights or forms of transferring stock, and the rights or forms of voting upon stock by means of proxies, which changes have been made with a view to embarrass transfers or voting, or both, on the part of foreign shareholders, but that such changes in the by-laws or articles of association, or either of them, whatever they may be,
 246 are for the time being kept secret by the said Gould, Fisk and Lane.

And your orators, upon their information and belief, further show that at various times since the said Gould, Fisk and Lane acquired control in and over the affairs of the Erie Railway Company as hereinbefore mentioned, as well before as after the time they acquired the complete control in July, 1868, the said Gould, Fisk and Lane have wrongfully expended and caused to be expended, and concurred in the expenditure of, the moneys of the Erie Railway Company to a very large amount, for the purpose of obtaining or influencing legislative action by them desired, besides the particular legislation hereinbefore specified, and in and about the carrying on of a great number of suits instigated or set on foot or carried on by the said Gould, Fisk and Lane, or some of them or for their use, account or benefit, and in and about

the defence of various other suits, wherein they were 247
 parties defendant, or the defence whereof was for their
 personal account or benefit, and in and about nume-
 rous litigations, in some of which the Erie Railway was
 a party, and in others of which it was not, and for vari-
 ous purposes, ordinary and extraordinary, and in great
 proportion illegitimate, connected with such litigations,
 and for the purpose of securing or promoting the objects
 which by such litigations the said Gould, Fisk and Lane,
 sometimes in the name of the Erie Railway Company
 and sometimes not in such name, were seeking to obtain
 for their own private and personal gain, benefit, advan-
 tage or protection; and that the said Gould, Fisk and
 Lane, in the course of their various schemes and opera-
 tions hereinbefore mentioned or referred to, and for the 248
 purpose of carrying out their own objects and purposes
 connected therewith, have at divers times caused to be
 instituted and carried on by other persons, fraudulent and
 collusive suits, some of them purporting to be against
 the Erie Railway Company and some of them purporting
 to be against themselves or some of them, but all of which
 suits were in fact in their own interests, and that the
 expenses, direct and indirect, of such suits, including
 various collateral expenditures, extraordinary as well in
 character as in amount, have been ultimately paid or 249
 caused to be paid by the said Gould, Fisk and Lane, out
 of the funds of the Erie Railway Company, in fraud of
 the rights of the *bona fide* shareholders of such Com-
 pany, and that the sums thus paid from the Company's
 funds include as well such expenditures to an enormous
 amount by or on behalf of the pretended plaintiffs in
 such suits, and of the parties purporting to be therein
 arrayed in hostility against the Erie Railway Company or
 against the said Gould, Fisk and Lane, as such expendi-
 tures purporting to have been made on behalf of the Erie
 Railway Company.

And your orators, upon information and belief, further
 show, that it has been, and is, a practice on the part of the
 said Gould, Fisk, and Lane, when hard pressed by a *bona*

250 *fide* adverse litigation, seeking redress against any of their fraudulent or wrongful acts or proceedings in connection with the affairs of the Erie Railway Company, to start and carry on, or cause to be carried on by some confederate, some pretended adverse, but really friendly and collusive suit or proceeding relative to the same subject matter, and to use the same to embarrass and frustrate the ends of such really adverse proceeding, and on some occasions when pressed by adverse proceedings, which had resulted, or were about to result, in the appointment of a Receiver of funds which the said Gould, Fisk, and Lane or some of them, had wrongfully gotten into their possession in connection with the affairs of the Erie Railway Company, they have frustrated such proceeding and such adverse Receivership, by means of a collusive proceeding, and the collusive appointment, sometimes of said Jay Gould himself, and sometimes of some friend and associate of the said Gould, Fisk, and Lane, or some of them, to be such Receiver, and that in one instance one Peter B. Sweeny, a person possessing great political influence, and whose friendship, aid and co-operation in their schemes the said Gould, Fisk and Lane, for that reason and others desired to obtain, was, nominally, appointed receiver of a large fund belonging to the Erie Railway Company, and although no portion of such money ever passed into his hands, and he never in fact performed any service whatever as such receiver, and never earned or became entitled to any commissions as such receiver, the said Sweeney was, upon the discharge of his receivership, a short time after the order for his appointment had been made, paid from and out of the funds of the Erie Railway Company, a very large sum of money, amounting to \$150,000 or thereabouts, in pretended compensation for his services as such receiver, which payment was so made by the procurement or with the assent and concurrence of the said Gould, Fisk and Lane; and if any order of Court authorizing such payment was obtained, as to which fact your orators are ignorant, your orators

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252

charge that the obtaining thereof was accomplished by means of collusion and fraud on the part of said Gould, Fisk and Lane, and that their assent to, or acquiescence in, this payment to their friend and associate the said Peter B. Sweeney, was a fraudulent breach of trust on the part of said Gould, Fisk and Lane, for the loss from which, resulting to the said Company, the said Gould, Fisk and Lane are personally responsible. 253

And your orators upon their information and belief further show, that the said Gould, Fisk and Lane, since they acquired control of the said company, as aforesaid, have wrongfully and fraudulently expended a very large amount of the funds of the said company, in the controlling or influencing of public elections, and otherwise in aid of political partizanship, and that they have so done with the object and purpose of thereby obtaining for themselves aid in their vast schemes of corruption and fraud, and immunity against their just punishment therefor, and likewise that the said Gould, Fisk and Lane on divers occasions when they knew or had reason to suspect that legal process was about to be served upon them either as officers of the Erie Railway Company or in their individual capacities, have by the most elaborate means and combinations avoided or delayed the service of such process, and to such end have caused themselves, while in the offices of said company and in other places, to be as it were barricaded, and admission to their presence denied to persons seeking to serve such process, and to this end they have employed and kept in service large numbers of men, including so-called roughs and fighting men, and have employed and kept in service large numbers of other persons, as spies and otherwise in aid of their designs for preventing such service of process. And in respect of all the foregoing allegations of this complaint, from the end of the charge relating to the alteration of the by laws, up to this present point, your orators say that they are unable to make any more particular specifications in respect of the same, but they demand from the said 254 255

256 Gould, Fisk and Lane a full accounting in respect of all expenditures of the said company's money, for any of the objects or purposes above mentioned or referred to in such behalf, and they pray that by the decree in this suit the said Gould, Fisk and Lane may be adjudged to repay to the said company, for the benefit of your orators, and the other bona fide shareholders, the full amount of all such expenditures wrongfully made from its funds, with interest thereon.

And your orators further show, that by the official report made by the Erie Railway Company to the State Engineer and Surveyor, in pursuance of the General Railroad Act for the year ending September 30, 1868, 257 purporting to be verified by the oath of the said Jay Gould as President, a printed copy of which report issued from the printing office of the Erie Railway Company, has recently been procured by the agents of your orators, and is now in their possession, and from the additional tabular statements annexed to and printed with the said report in the said pamphlet, the following facts appear, viz. :

That at the beginning of the said year, viz., September 30, 1867, the total amount of the share capital of the said Company, including both the preferred and common stock, was \$25,111,210; and the total amount 258 of the funded debt \$22,429,920; and the total amount of the floating debt \$3,524,813 23; and that at the close of the said year, viz., on September 30, 1868, the total amount of share capital was \$46,302,210; and the total amount of the funded debt \$23,398,800; and the total amount of the floating debt \$4,893,735 81; thus exhibiting an increase during that year under the management of the said Gould, Fisk and Lane and their then confederates, of \$21,191,000 in the amount of share capital, \$968,880 in the amount of the funded debt, and \$1,368,922 58 in the amount of the floating debt, while the whole amount which according to the said official report was expended during the said year for permanent improvements of and additions to the said railroad, its ap-

purtenances and equipment, including graduation and 259
 masonry, superstructure, including iron, passenger and
 freight stations, buildings and fixtures, engine and car-
 houses, machine shops, machinery and fixtures, land,
 land damages and fences, locomotives and fixtures and
 snow-plows, passenger and baggage cars, freight and
 other cars, and Pavonia Ferry, was no more than the
 sum of \$2,464,615 87; deducting which amount from
 the before mentioned increase of stock and funded and
 floating debt during said year, there is left a deficiency
 of over \$21,000,000 arising from that year's operations
 of the said Gould, Fisk and Lane and their then confeder-
 ates, which is wholly unaccounted for, except that
 there is a charge in the said report of \$4,774,220 40 for 260
 'discount on sale of convertible bonds, &c.," which is
 therein reckoned by said Gould as part of the "cost of
 the road and equipment," but which charge your orators
 claim to be wholly inadmissible, illegal and fraudulent;
 and the deficiency thus remaining unaccounted for from
 this year's operations, when added to the before mention-
 ed deficiency for the year ending September 30th, 1869,
 shows an aggregate against said Gould, Fisk and Lane
 and their confederates of between \$40,000,000 and
 \$50,000,000. It further appears from the said report and
 the schedules published in connection therewith by the
 Erie Railway Company, as aforesaid, that the receipts
 by said Company from its earnings for the said year 261
 amounted to \$14,376,872 27, and that the payments
 during such year for current expenses, including trans-
 portation expenses and all other payments for other
 purposes than construction, amounted to \$11,716,163 20,
 leaving an apparent surplus of \$2,660,709 07, which
 is stated to have been applied as follows, viz.:

To interest on mortgage debt \$1,687,267 65, to rents
 of leased railroads \$703,392 93, and to "interest, &c.,"
 \$247,376, leaving a surplus of about \$22,000, stated to
 have been applicable in aid of the dividend on the pre-
 ferred stock made as of Jan. 7th, 1868, which dividend
 amounted to \$567,304 85, and, according to the said

262 report and schedules thereto annexed, would appear to have been almost wholly made out of the surplus income which accrued prior to October 1st, 1861. By the same report and schedules it further appears that in the year ending Sept. 30th, 1867, the gross receipts from earnings amounted to \$14,317,213 14, and the current expenses, including transportation expenses and all other payments for other purposes than construction, amounted to \$10,674,921 86, leaving net earnings to the amount of \$3,642,291 28.

And your orators further show, that upon examination of the official reports made by the Erie Railway Company to the State Engineer and Surveyor, for the year next preceding that in which the said Gould and
263 Fisk came into the management of the said company, and for the two years of their management up to 30th September, 1869, the following comparative results appear, namely:

Year ending 30th Sept., 1867:

Gross earnings.....\$14,317,213 14

Current expenses..... 10,674,921 86

Net earnings..... 3,642,291 28

Year ending 30th Sept., 1868:

Gross earnings.....\$14,376,872 27

Current expenses..... 11,716,163 20

Net earnings..... 2,660,709 07

Year ending 30th Sept., 1869:

Gross earnings.....\$16,721,500 34

Current expenses..... 13,718,085 43

Net earnings..... 3,003,414 91

264 And your orators further show, that in the foregoing comparative statement, the items of current expenses include certain items which are not strictly transportation or operating expenses of the road, that is to say, expenditures for Hudson River ferry, operating telegraph, hire of cars, internal revenue tax, loss on Lake Erie steamers and insurance, and that if such comparative

statement be corrected by excluding these items, the 265
following comparative results appear, namely :

Year ending 30th Sept., 1867 :

Gross earnings.....	\$14,317,213	14
Transportation or opera- ting expenses of the road.....	10,311,217	20
Surplus.....	\$4,005,995	94

Year ending 30th Sept., 1868 :

Gross earnings.....	\$14,376,872	27
Transportation or opera- ting expenses of the road.....	11,143,092	32
Surplus.....	3,233,779	95

Year ending 30th Sept., 1869 :

Gross earnings.....	\$16,721,500	34
Transportation or opera- ting expenses of the road.....	13,259,266	61
Surplus.....	3,462,233	73

And your orators show that thus it appears, 267
from the statements of the said Gould, Fisk, and
Lane themselves, that as the net result of their
two years' management of the Erie Railway Company
from the time when said Fisk and Gould first acquired
power and control therein, they have succeeded in re-
ducing the net earnings of the said company to the extent
of more than \$500,000 a year, while they have increased
the amount of its share capital and funded and floating
debt from \$51,065,943 23 to \$101,935,710, or to an
extent of more than \$50,000,000, and that of this
\$50,000,000 of additional capital obtained from
the public as for investment in said enterprise,
they do not pretend to show more than between

268 six and seven millions actually expended in improvements of and additions to the property, and they have not paid any dividends whatever to the shareholders, except the single dividend on the preferred stock in January, 1868, which appears to have been substantially paid out of surplus earnings accruing prior to the time when said Gould and Fisk came into the management. And your orators, upon their information and belief, further state that the above-mentioned decrease of net earnings in the year ending September 30, 1869, below the nett earnings of the year ending September 30, 1867, was not owing to any cause of general application to 269 railroads, or to any particular circumstances of the Erie railway other than its mismanagement. That, during the same period, other railroads, situated not more favorably for business and profit than the Erie railway, increased their nett earnings, profit and productiveness, and that, during said period, if the Erie railway had been honestly and properly managed, it could and would have made a gain in nett earnings in the said latter year over the said nett earnings of the former year, instead of a loss or diminution in such amount, and without any increase of its share capital, or of its indebtedness, or other permanent investment of additional capital therein.

270 And your orators further show, that the public mind has become so fully impressed with the extent and degree of the disastrous consequences resulting and likely to result to the Erie Railway Company from having said Gould, Fisk and Lane, to be its managers, that the market price of the preferred stock has recently fallen to about forty-two or forty-three per cent., and the market price of the common stock to about twenty-five per cent., and the market value of its mortgage bonds has also very materially fallen.

And your orators further show, that the said Erie Railway Company has not now any substantial credit for any considerable amount, without giving collateral security, and it has even fallen into discredit with its workmen and other employees, who have more than once turned

out upon a strike by reason of the failure of the managers of said Company to pay them their wages when they were due. 271

And your orators further show, that the credit of the said Company, and the market prices of its stocks, of both classes, would be yet much lower than they are, were it not for the hope entertained that the said Gould and Fisk and Lane will be ousted from the control of said Company's affairs and brought to justice for the wrongs and frauds which they have committed.

And your orators further show, as they are informed and believe that not only have the said Gould, Fisk and Lane been dishonest in their management of said company, and their doings in connection with its affairs, but they wholly lack capacity for the successful or advantageous management of the affairs of such a company, and apart from their appropriations of the company's funds to their own private purposes and objects, their conduct of the company's affairs has been and is characterized by gross improvidence, mismanagement, waste and incapacity, and that as your orators believe, the management by said Gould and Fisk of their own pecuniary affairs has been and is characterized by the like qualities and conduct, and that a very large portion of the money of the company which they have wrongfully and fraudulently obtained has been by them wasted, sunk, spent and lost. That as your orators are informed and believe, neither of the said Gould, Fisk and Lane was possessed of any considerable amount of property or credit at the time when they came into the control of the Erie Railway Company in October, 1867; that prior to that time the said Gould had been a tanner in Luzerne County, Pennsylvania, where he had made a ruinous bankruptcy, and left that state with unsatisfied judgments standing against him, and some of which judgments your orators believe remained unpaid at the time when he came into the Erie Railway Company; that the said Lane had failed in business, or in the speculations in which he had been engaged, a short time be- 272 273

274 fore he came into the said Board of Directors; and your orators believe, though as to this they may be mistaken, that the said James Fisk, Junior had also been unsuccessful in business in Boston, from whence he came, not long before this period; and your orators believe and allege that at all events whatever property the said Gould, Fisk and Lane or either of them had at the time when they acquired control of the Erie Railway Company as aforesaid, had been acquired by them within a comparatively recent period, and was mainly if not entirely the result of stock speculations.

And your orators believe and charge, that the whole amount of the property now possessed by the said Fisk, Gould and Lane, is vastly less than the amount of
275 their legal liabilities to the Erie Railway Company, and its *bona fide* shareholders by reason of the premises hereinbefore alleged, and that so, if not otherwise, the said Gould, Fisk and Lane, are, and each of them is irretrievably insolvent.

And your orators further show that it is essential to the protection of the rights and interests of themselves and the other *bona fide* shareholders of the Erie Railway Company, and in order to avoid the further wrongful injury and depreciation of such interests as such shareholders, that the said Gould, Fisk and Lane, and the said Company, and all the officers, directors, managers and agents thereof shall be enjoined and restrained by the order of this Court, from issuing any further convertible
276 bonds of the said Company, and from issuing any further stock or certificates of stock of said Company otherwise than upon surrender and cancellation of certificates of existing valid stock of said Company upon transfer of such stock in the usual manner.

And your orators further show that by reason of the several matters herein before alleged, the said Gould, Fisk and Lane respectively, are wholly unfit, improper and unsafe persons to be trustees of the property of said Company or for the shareholders or creditors thereof, or to be any longer entrusted with the management or control

of the property, funds or affairs of the said Company, or 277
 with the exercise of any of their powers as directors, executive officers or executive committee of said Company, and that it is essential to the preservation of the rights and interests of your orators, and the other *bona fide* shareholders, that they should be at once ousted from all management, control or power, in or about the property, funds or affairs of said corporation, and enjoined from exercising any of their powers as directors, executive officers, or executive committee, or from in anywise interfering with the property, funds or affairs of the said Company.

And your orators further state, that by reason of the power which the said Gould, Fisk and Lane, now practically exercise over the property of said Company and its 278
 books, accounts and documents, and of the influence which they exercise over the subordinate officers and employees of said Company, in whom rest in great measure the knowledge and information necessary to be obtained in relation to the details of the past doings of the said Gould, Fisk and Lane, in respect to the Company's affairs, it is, and will be impracticable to obtain any fair investigation of the details of such transactions, until the said Gould, Fisk and Lane, shall be wholly 279
 ousted from their said power and control, and deprived of their said influence.

And your orators further show, that unless and until the said Gould, Fisk and Lane shall be wholly excluded from the management and control of the affairs of said Company, and such management shall be placed in the hands of persons possessing integrity and independence of character and that high degree of competence, experience and skill which is requisite for the adequate and proper management of so great a concern, the rights and interests of your orators and the other *bona fide* stockholders will be constantly exposed to further and continual depreciation, injury and loss, and that if the said Gould, Fisk and Lane be very much longer permitted to remain in the control of the said Company, no other re-

280 sult can be reasonably looked for than the utter wreck and ruin of the whole interest of the holders of the common stock, and that the interest of the holders of preferred stock will also thereby be put in great jeopardy.

And your orators further show, that if the control of said Gould, Fisk and Lane be permitted to continue, even until the next annual election, there will be thereby occasioned great and irreparable loss to your orators and the other *bona fide* shareholders, even if by that time the said Gould, Fisk and Lane shall be legally forced to allow the present owners of the stock which stands in the names of former holders, whose proxies the said Gould, Fisk and Lane can control, to transfer such stock into
 281 their own names or the name of their nominees, and even although before the time for the next annual election there shall have been a competent legal adjudication of the invalidity of the said pretended classification of Directors, so as to require an entire Board to be elected in October of this present year; and unless both those contingencies shall be determined favorably to the interests of your orators and the other *bona fide* shareholders prior to the time for the next annual election, the coming of such time would afford little or no opportunity of redress for the *bona fide* shareholders against the still
 282 further continuance of the wrongs and frauds of the said Gould, Fisk and Lane. And your orators further show, that by reason of the composition of the present Board of Directors, who were put in office by said Gould, Fisk and Lane in October, 1869, as aforesaid, and their confederacy with and subjection to the said Gould, Fisk and Lane, and the other circumstances hereinbefore stated in that behalf, there can be no adequate and proper management of the affairs of the Company under the administration of that Board of Directors, even after the exclusion of said Gould, Fisk and Lane, or under the administration of executive officer or agents likely to be selected by them in place of said Gould, Fisk and Lane and in place of the present agents and employees heretofore selected by the said Gould, Fisk and Lane. And

that in order to the due and proper management of the 283
 affairs of said Company and the preservation of the
 rights and interests of your orators and the other *bona*
fide shareholders until a new Board of Directors can be
 elected by the shareholders at a regular election, hon-
 estly and fairly conducted, it is essential that a receiver
 should be appointed by this Court to take charge of the
 property, funds and affairs of the said corporation, in-
 cluding its railroad and appurtenances, and to manage
 and carry on the same under the order and direction of
 this Court.

And your orators further show, that the several rights 284
 and equities, claims and demands in favor of the Erie
 Railway Company which are hereinbefore set forth or
 mentioned, cannot be enforced by suit brought in the
 name and on behalf of said Company, for the reason that
 the control of said Company is now wholly in the hands
 of said Gould, Fisk and Lane, and your orators are
 wholly unable to procure the bringing of a suit in the
 name of said Company, as plaintiff, against them. And
 your orators further show, that the holders of the pre-
 ferred stock, as well as the holders of the common
 stock of said Company are very numerous as well as
 constantly changing, and it is impracticable to make
 them parties either plaintiff or defendant in this suit,
 and this bill is therefore filed on behalf of your orators
 and the other *bona fide* shareholders who shall elect to 285
 unite in the suit.

In tender consideration of all which premises here-
 inbefore alleged, and inasmuch as your orators are
 remediless in the premises at and by the strict rules of
 the common law, and can have adequate relief only in
 a Court of Equity :—

To the end therefore that the said defendants may an-
 swer all and singular the premises, but without oath, an
 answer on oath being hereby expressly waived, and that
 the said Jay Gould, James Fisk, Junior, and Frederick
 A. Lane, and each of them, may be compelled to render
 a full, true, and just account of all their trust and mau-

286 agement in respect of the property, funds and affairs of the Erie Railway Company since their election as Directors in October, 1867, and of all moneys and funds belonging to the said Company arising from any source whatsoever, which since that time have come into the hands or under the control of them or either of them, and of the disposition of all such moneys, and likewise to come to a full, just, and true accounting in respect of all profits, benefits, gains, and advantages whatsoever which during such period they, or either of them, have directly or indirectly derived to themselves from the property, funds, or credit of the said Company, or at its expense, or in any wise by reason of the trust and powers in them vested as Executive Officers, Executive Committee, or Directors of said Company, and likewise in respect of all losses, damages and injuries to which during such period they have subjected, or caused to be subjected the said Company, and in respect of all other the allegations and charges in this bill contained, and that the said Gould, Fisk and Lane may, by the decree in this suit, be adjudged to make payment and compensation to the Erie Railway Company, for the benefit of your orators and the other *bona fide* shareholders, to the full extent of all such profits, benefits, gains and advantages, and of all such damages, losses and injuries, and that by such decree the said Gould, Fisk and Lane may be ousted from all management, control or power in or about the property, funds, or affairs of said corporation, and enjoined from exercising any powers as Directors, Executive officers or Executive Committee thereof, and in any way interfering with the property, funds, or affairs of the said company, and that the said Gould, Fisk and Lane and the said Erie Railway Company and all its officers, directors, managers and agents, may be enjoined and restrained by this Court from issuing any further convertible bonds of said company, and from issuing any further stock or certificates of stock of said company, otherwise than upon surrender and cancellation of certificates of existing valid stock of said

company upon transfer of such stock in the usual manner, and that by the order of this Court in this suit, a suitable person or persons may be appointed to be receiver or receivers to take charge of the property, funds and affairs of the said The Erie Railway Company, including its railroad and appurtenances, and to manage and carry on the same under the order and subject to the direction of this Court, in such manner and for and during such period as under the circumstances may seem proper, and that pending this suit by writ of injunction issuing out of and under the seal of this Court, the said Gould, Fisk and Lane and the said The Erie Railway Company, and all its officers, directors, manager and agents, may, under the proper penalty, be enjoined and restrained from issuing or delivering any bonds or obligations of the said The Erie Railway Company, purporting to confer upon the holder of such bond or obligation any right or privilege of converting the same into stock of said company, or of receiving any such stock in exchange therefor, and likewise from issuing, putting in circulation, delivering, or in any way aiding in giving currency to any stock or certificates purporting to be for stock of the said The Erie Railway Company, otherwise than upon the surrender and cancellation of genuine certificates of existing shares of stock of said company now standing registered upon its books, upon transfer of such stock in the usual manner, and likewise that your orators may, pending this suit, have such writ of injunction enjoining and restraining the said Gould, Fisk and Lane, and each of them and their attorneys and agents from exercising any power or authority, and from doing any act whatever as directors or executive officers, or executive committee of the Erie Railway Company and from in anywise interfering with any of the property, funds or affairs of the said company, and from disposing of any of such property or funds of said Company, and from removing, or suffering or permitting to be removed from the offices of the said The Erie Railway Company, any of the books, papers, securities, or funds of said

292 Company, and from secreting or concealing, or suffering to be secreted or concealed, any such books, papers, securities or funds, and that your orators may have such further or such other order, relief and decree in the premises as may be equitable

May it please your Honors to grant unto your orators the writ of subpoena to be directed to the said The Erie Railway Company, Jay Gould, James Fisk, Junior, and Frederick A. Lane, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honors in this Court, then and there to answer all and singular the premises, but without oath, an answer on oath being waived as aforesaid, and to stand
293 to abide and perform such further order, direction and decree therein as to your Honors shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray, &c.

CHARLES BURT.

EVARTS, SOUTHMAYD & CHOATE,
Plaintiff's Solicitors.

CHS. F. SOUTHMAYD,
WM. M. EVARTS,
Of Counsel.

Southern District of New York, ss.:

294 Charles Burt, one of the above named plaintiffs who hath subscribed the foregoing bill on his own behalf, and as agent and attorney, in fact of the other plaintiffs being duly sworn, deposeth and saith that he is the agent and attorney in fact, of his above named co-plaintiffs, in respect of the institution and prosecution of this suit: and he further saith that he has read the foregoing bill so by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes the same to be true. And further saith not
Sworn before me, this 8th }
day of April, 1870. }

CHARLES BURT.

A. W. GREEN,
Notary Public,
N. Y. County.

[SEAL.]

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